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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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August 1, 2012
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FINANCE DOCKET NO. 35652

**PETITION OF
DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH, CHERYL HATCH,
KATHLEEN KELLEY, ANDREW WILKLUND, AND RICHARD KOSIBA**

FOR DECLARATORY ORDER

VOLUME 1

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PETITION OF DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH, CHERYL HATCH, KATHLEEN KELLEY, ANDREW WILKLUND, AND RICHARD KOSIBA FOR DECLARATORY ORDER

Diana Del Grosso, Ray Smith, Joseph Hatch, Cheryl Hatch, Kathleen Kelley, Andrew Wiklund, and Richard Kosiba (the “Petitioners”), by counsel, hereby petition the Surface Transportation Board for a declaratory order finding that specific operations in the Town of Upton (the “Town”) claimed to be operated by the Grafton and Upton Railroad (“G&U”) do not constitute “transportation by a rail carrier,” and that the Town’s zoning and other regulations are therefore not preempted under 49 USCS § 10501 (b). The Petitioners are immediate neighbors to the site on which the G&U operates its facilities and are persons aggrieved thereby.

BACKGROUND

This petition requests the Surface Transportation Board (the “Board”) to enter a declaratory order pursuant to 5 U.S.C. § 554 (e) and 49 U.S.C. § 721 (b) (4) for the purpose of terminating a controversy and removing uncertainty with regard to the scope of preemption under the Interstate Commerce Commission Termination Act (“ICCTA”). Specifically, the nature of this proceeding involves the G&U’s claims that (1) a wood pellet packaging plant and (2) a chemical bulk transfer facility, trucking and storage operation at the recently opened facility located at 25 Maple Avenue, Upton Massachusetts (“the Upton Facility”) are not subject to the

Town's zoning and other local regulatory jurisdiction by way of the Federal preemption as set forth in 49 U.S.C. §10501(b). By asserting a claim of preemption, the G&U has avoided making a detailed presentation with regard to its activities to the Town's agencies and officials. The Town, acting by and through its Board of Selectmen, has apparently accepted this claim. The Town has not enforced and is not enforcing otherwise applicable Town zoning by-laws and other regulations. In short, the Town government, with the exception of the Planning Board, (which has no independent authority to initiate litigation) has apparently decided not to challenge the G&U's claim to be preempted from any local regulation by Section 10501(b).

The Petitioners disagree with the conclusions of the Town government and respectfully request the Board to reject G&U's preemption claim.

STATEMENT OF THE FACTS

A. *Identity and Addresses of Parties* See Exhibit 1, V.2, p. 5.

1. Diana Del Grosso is the owner of property located at 15 Depot Street, Upton MA 01568.
2. Ray Smith is the owner of property located at 9 Railroad Avenue, Upton, MA 01568.
3. Joseph Hatch is a tenant on property located at 17 Depot Street, Upton, MA 01568.
4. Cheryl Hatch is a tenant on property located at 17 Depot Avenue, Upton, MA 01568.

5. Richard Kosiba is the owner of property located at 6 Railroad Avenue, Upton, MA 01568.
6. Kathleen Kelley is the owner of property located at 17 Farm Street, Upton, MA 01568.
7. Andrew Wiklund is the owner of property located at 5 Railroad Avenue, Upton, MA 01568.
8. The Grafton and Upton Railroad Company (“the G&U”) is a short line railroad company. The corporate address is: 50 Westboro Road, Grafton, MA, 01519. See Exhibit 3, V.2, p. 12.
9. Dana Transport is a Dana Company and has a local address of 88 Westboro Road, Grafton, MA, 01519 and a corporate address of 210 Essex Avenue East, Avenel, NJ 07001. See Exhibit 4, V.2, p.14.
10. Dana Rail Care is a Dana Company and has an address of 1280 Railcar Avenue, Wilmington, Delaware, 19802. See Exhibit 5, V.2, p. 16.
11. Grafton Upton Railcare, LLC (GU Railcare), a Dana Companies affiliate (as characterized by the G&U attorney, James E. Howard. See Exhibit 6, V.2, p. 19), has an address of 25 Maple Avenue, Upton MA 01568. See Exhibit 7, V.2, p. 23

12. Liquid Transport Company (LTC), is a Dana Company with Corporate Headquarters at 8470 Allison Pointe, St 400, Indianapolis, IN 46250. See Exhibit 8, V.2, p. 27.
13. International Equipment Leasing, Inc., is a Dana Company specializing in the packaging and transport of bulk liquids with an address of 210 East Essex Avenue, P.O. Box 482, Avenel, New Jersey 07001. See Exhibit 9, V.2, p. 29.
14. Suttles Truck Leasing, LLC, is a specialist in short and long-haul chemical common carrier transportation and has been integrated into Dana Transport, a Dana Company. See Exhibit 10, V.2, p. 31.

B. Background

15. The G&U is a short-line railroad that was recently purchased by commercial real estate developer Jon Delli Priscolli. See Exhibit 11, V.2, p. 33. The G&U recently reactivated a rail line that had been largely dormant for the past twenty years. See Exhibit 11, V.2, p. 33. Previous reported annual revenues for the G&U were approximately \$210,000. See Exhibit 12, V.2, p. 36. Currently, the G&U reported annual revenues are between \$1M and \$2.5M. See Exhibit 13, V.2, p. 38.
16. The Upton Facility is a 38-acre site located in Upton, Massachusetts that may be characterized as a bulk transfer terminal and wood pellet packaging plant along the G&U's short line railroad route. See Exhibit 1, V.2, p. 5.

17. The property on which the Upton Facility is located is owned by Upton Development Group. See Exhibit 14, V.2, p. 40. This property is a former sand and gravel pit with no prior recent history of being used as a bulk transfer terminal.
18. The G&U leases the property on which the Upton Facility is located. See Exhibit 15, V.2, p. 42.
19. Dana Companies have facilities throughout the nation. The Dana Companies have a forty year history of bulk chemical transport. Reported annual revenues are in excess of \$190 million. See Exhibit 16, V.2, p. 44. The Dana Companies specialize in short and long-haul chemical transportation, chemical storage, tank washing, rail car cleaning/servicing and rail car equipment leasing. The Dana Companies do not include a rail carrier. See Exhibit 10, V.2, p. 31. The Dana Companies hold themselves out as providing liquid bulk transportation services in the United States and internationally. The Dana Companies, as set forth above, handle the transportation of food and pharmaceutical-grades, as well as chemical and petroleum products through a fleet of over-the-road liquid bulk tank trailers, container tanks, heavy duty drop-deck chassis, and liquid bulk rail cars.

See Exhibit 17, V.2, p. 46. The Dana Companies also engage in inland transportation, equipment leasing, intermodal rail, intermediate bulk container systems, ocean carrier, repair and storage, spotting of trailers, and other over-the-road activities. In addition, the Dana Companies engage in the sale, rental, leasing, and service of yard trucks, totes, road trailers, rail cars, and terminal tractors, as well as supplies, and related spare parts. The Dana Companies offer rail car services and specialize in the repair and

maintenance of tractors, trailers, vans, straight trucks, flatbeds, and heavy duty equipment. See Exhibit 17, V.2, p. 46. Most of these activities have been observed at the Upton facility. See Exhibit 1, V.2, pp. 5-8.

20. The founder of Dana Companies (Ronald B. Dana) and the local terminal manager of Dana Transport (Michael Polselli) formed the entity known as GU Railcare on April 27, 2011. See Exhibit 7, V.2, p. 24.
21. The Upton Facility has undergone substantial recent expansion and construction including construction of a wood pellet packaging plant, two large storage silos and a transloading facility. See V.3, p. 12.
22. To date, the Town has not received any formal plans pertaining to the Upton Facility. No local permits have been granted. See Exhibit 1, V.2, p. 6.
23. If the Upton Facility is subject to the Town's local regulations, the following would likely apply:

Special Permit (Board of Appeals): This Upton Facility is located in a "Commercial and Industrial" zoning district. The Town Zoning By-Law Use Regulations state that a "plant for light manufacturing or packaging" located in a Commercial and Industrial zoning district requires a special permit with the Board of Appeals as the special permit granting authority. A "trucking terminal or motor freight station"; an "establishment for the repair or storage of trailers, trucks, farm implements or machinery"; and "storage facilities and warehouses" would also require a special permit from the Zoning Board of Appeals.

Site Plan Approval (Planning Board): The Upton Facility would require a Site Plan Approval process with the Planning Board as the approval authority.

Variance (Board of Appeals): Since the Upton Planning Board has not received an application or plans, the compliance of the Upton Facility with dimensional regulations set forth in the Zoning By-law cannot be determined at this time. Any noncompliance would require a variance pursuant to G.L. c. 40A, s. 10.

Performance Standards and Restrictions: In addition to the zoning permits and approvals set forth above, any business would be subject to certain restrictions regarding above-ground storage limits of hazardous materials in tanks larger than ten thousand (10,000) gallons; the repair of trailers, trucks or machinery; limitations on odor, dust, noise, vibration, and smoke; exterior lighting standards, enclosure and screening standards; access standards; and sign standards.

See Exhibit 18, V.2, pp. 48-49.

24. Correspondence from James E. Howard, the G&U's legal counsel, to the Upton Town Counsel regarding the Upton Facility states that the packaging plant is "handling" wood pellets, and that, as such, it is engaged in rail transportation that is federally preempted. See Exhibit 6, V.2, pp. 19-20. Mr. Howard further states that "all of the transloading activities at Upton Yard are performed by Grafton Upton Railcare, LLC" and that GU Railcare "will provide transloading services 'for and under the auspices and control' of G&U." See Exhibit 6, V.2, p. 19.
25. Dana Transport employed an advisor to assist it in setting up a rail transfer operation in Upton, Massachusetts. See Exhibit 19, V.2, p. 54.
26. Federal Railroad Administration spokesperson Warren Flatau, in commenting with regard to the Upton Facility, is reported as having made the following statement: "My

understanding is that the railroad leases a parcel of land adjacent to the yard to DANA Transportation Inc. which operates the intermodal transload facility.” See Exhibit 20, V.2, p. 64.

27. Bulk wood pellets are shipped by rail to the Upton Facility, typically in 100-ton hopper cars marked Dana Rail Care, a Dana Companies affiliate. See Exhibit 1, V.2, p. 5-6. See V.3, p. 3. According to James E. Howard, G&U’s legal counsel, the following activities occur at the Upton Facility:

Wood dust is removed by means of vacuuming and screening before pellets are bagged. Wood dust has not been reused or repelletized. Bags intended for retail sale are acquired by the transloading subcontractor subject to specifications provided by the producers, and the bags display the producer’s name and various other information specified by the producers. A standard bag containing 40 pounds of pellets and is generally shipped out of the yard by truck on pallets containing 50 bags each. At this time, Grafton & Upton Railroad is providing transloading services for 3 pellet producers at the yard. See Exhibit 21, V.2, p.79.

28. The transfer, screening, vacuuming, bagging and palletizing of wood pellets is all done by GU Rail Care, a Dana Companies affiliate. See Exhibit 4. The pallets are loaded on flat bed trucks typically marked Dana Transport. See Exhibit 1, V.2, p. 6. See Exhibit 2, V.2, p. 10.
29. Marketing information identifies Dana Transport as performing transloading services at the Upton Facility. See Exhibit 22, V.2, p. 81.
30. The G&U has identified Dana Transport as a G&U sub-contractor. See Exhibit 23, V.2, p.83.

31. Marketing information identifies Dana Transport as providing trucking services at the Upton Facility. See Exhibit 22, V.2, p. 81.
32. Marketing information identifies Dana Transport as providing services at the Upton Facility including truck wash, liquid bulk, dry bulk and ISO Container. See Exhibit 22, V.2, p. 81.
33. Truck tankers marked DANA and DANA Leasing Systems are being stored at the Upton Facility. See Exhibit 1, V.2, p. 6-7. See V.3, pp. 7, 11. Dana Transport flatbed trucks are routinely observed at the Upton Facility being loaded with goods in preparation for shipment to final destination. See Exhibit 1, V.2, p. 6-7. See V.3, p. 16.
34. Dana Transport truck tankers are routinely observed at the Upton Facility and are being stored at the Upton Facility. See Exhibit 1, V.2, p. 6-7. See V.3, p. 7.
35. Dana Rail Care rail tankers are routinely observed at the Upton Facility loaded with liquid bulk goods for transfer at the Upton Facility. Dana Rail Care rail tankers are also being stored at the Upton Facility. See Exhibit 1, V.2, p. 6-7. See V.3, p. 10.
36. Dana Transport leased truck tankers are routinely observed at the Upton Facility and have been observed attached to truck cabs loaded with goods in preparation for shipment to final destination. See Exhibit 1, V.2, p. 6-7. See V.3, p. 13.

37. Liquid Transport Company truck tankers are routinely observed at the Upton Facility and are being stored at the Upton Facility. See Exhibit 1, V.2, p.7. See V.3, pp. 8-9.
38. Suttles Leasing trucks are routinely observed at the Upton Facility. See Exhibit 1, V.2, p. 7. See V.3, pp. 4-6.
39. The Upton Facility [West Upton] is listed by the G&U as being a “Grafton Upton Bulk Terminal” (see Exhibit 24, V.2, p. 87) subject to a G&U Tariff (see Exhibit 24, V.2, pp. 85-96) and Service Terms and Guidelines (see Exhibit 25, V.2, pp. 98-115).
40. The Petitioners are not certain who funded the construction of the wood pellet packaging plant, silos, and transloading facilities, and who is the owner of these improvements. The wood pellet packaging plant, silos, and transloading facilities are located on the land leased by the G&U. See Exhibit 15, V.2, p. 42.
41. In correspondence dated August 18, 2011, James E. Howard, the G&U’s attorney, stated that it had “3 customers that send bulk rail cars, each of which contains approximately 100 tons of pellets to Upton for transloading.” See Exhibit 4. In December 2011, Okanagan Pellet Company was identified as a G&U and Dana Companies “partner” when Viridis Energy, Okanagan Pellet Company’s parent, announced that it had entered into a partnership with G&U and Dana Transport to transfer [bagging] operations to New England. See Exhibit 26, V.2, p. 117.

42. The vacuuming, screening, bagging, and palletizing of the wood pellets at the Upton Facility are done by GU Railcare, the recently formed LLC. See Exhibit 6, V.2, p.19 and Exhibit 7, V.2, pp. 23-25 and Exhibit 21, V.2, p.79. Attorney James E. Howard has indicated that GU Railcare is affiliated with the Dana Companies. See Exhibit 6, V.2, p.19.
43. The bags used at the Upton Facility wood pellet packaging plant are subject to specifications provided by the producers. See Exhibit 21, V.2, p.79. Okanagan Pellet shipped 40-pound bags produced at its manufacturing facility to New England via rail cars before using the wood pellet packaging facility in Upton. See Exhibit 26, V.2, p.117. The Petitioners are not certain if Okanagan continues to bag product at its facility and ship it to New England.
44. James E. Howard claimed in his correspondence to Upton Town Counsel, (See Exhibit 6, V.2, p. 20) that “bagging the pellets is an integral - indeed an essential - part of the transloading process required by the customer” and that “without bagging, it would be impossible to complete the transportation service.”
45. James E. Howard also claimed in Exhibit 6, V.2, p. 20 that “[s]ignificantly, the bagging process does not include any processing, fabrication or manufacturing that changes the nature or form of the pellets or that produces any by-products. The transloading of wood pellets at Upton is, therefore, substantially different than the “fabrication work”

performed by a non-railroad entity for its own account in a case decided by the STB and (sic) 2004.”

ARGUMENT

I. THE BAGGING OF WOOD PELLETS IS NOT RAIL “TRANSPORTATION” UNDER SECTION 10501(b).

To come within the Board’s jurisdiction and earn the preemption provided by Section 10501(b), an activity must constitute “transportation.” The ICCTA defines transportation as “services related to ... movement” by locomotive “including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property.” *See*, 49 U.S.C. § 10102(9). Thus, intermodal transloading operations and activities involving loading and unloading materials from rail cars and temporary storage of materials are rail transportation that come within the Board’s jurisdiction. However, manufacturing and commercial transactions that occur on property owned by a railroad that are not part of or integral to the provision of rail service are not contemplated within the term “transportation.” *See*, *NE Transrail, LLC d/b/a Wilmington & Woburn Terminal Railway, STB Finance Docket No. 34797, 2007 WL 2832987 (June 29, 2007)(NE Transrail)*. Whether a particular activity constitutes transportation by a rail carrier under Section 10501(b) is a case-by-case, fact-specific determination. *Town of Babylon and Pinelawn Cemetery, Petition for Declaratory Order, STB Fin. Dkt. No. 35057, 2008 WL 275697, at 3 (Feb. 1, 2008) (Babylon)*.

James E. Howard, the G&U’s legal counsel, claimed (Exhibit 6, V.2, pp. 18-21) that the wood pellet packaging activities are integral to the provision of rail service because (1) the wood pellets must be bagged in order to deliver them; (2) the wood pellet packaging activities are not

“fabrication” as defined in *Town of Milford Petition for Declaratory Order*, STB Finance Docket No. 34444 (August 11, 2004)(*Milford*); and (3) the activities are analogous to the “baling and wrapping” endorsed by the Board in *NE Transrail*.

Each of these claims is flawed. First, the wood pellet packaging activities are not integrally related to rail transportation. Instead, these activities are integrally related to manufacturing or processing for sale. The wood pellets are not bagged in 40-pound bags for rail transportation purposes. The pellets are bagged to complete the chain of processing so that they can be delivered to market. The pellets can be bagged either prior to rail shipment or after rail shipment. However, it is unlikely that for transportation by rail one would choose to convert 100 tons of bulk wood pellets into 5,000 40-pound bags. The pellets are bagged in 40-pound bags so that the consumer can carry them from the store to the car, from the car to the house, protect them while stored the house, and load them into the stove. The bags also serve to tell the consumer who manufactured the pellets, what is in the bag, and how to use the bagged goods. The bags allow for sale to the consumer by enabling the retailer to scan the barcode. The other activities, including screening and vacuuming to remove wood dust are even more explicitly not related to transportation.

Second, James E. Howard argued to the Town Counsel that:

the bagging process does not include any processing, fabrication or manufacturing that changes the nature or form of the pellets or that products and by-products. The transloading of wood pellets at Upton is, therefore, substantially different that the “fabrication work” performed by a non-railroad entity for its own account in case decided by the STB and (sic) 2004.” See Exhibit 6, V.2, p. 20.

Petitioners assert that bagging the pellets *does* change the nature of the pellets. It converts them from a mass of bulk wood pellets that cannot be sold to and used by consumers into bags of

wood pellets that are consumer and retailer friendly. It converts a work-in-progress to ready-to-sell finished goods. As such, the activities at the packaging facility are analogous to the “fabrication” in *Town of Milford Petition for Declaratory Order*, STB Finance Docket No. 34444 (August 11, 2004), where the Board stated that “rail/truck transloading, steel fabrication, and truck delivery are not the type of activities that, standing alone, would be sufficient to qualify [] as a “rail carrier.”

Finally, James E. Howard also stated:

the pellet transloading activities are similar to the baling and wrapping of construction and demolition debris, which the STB determined to be an integral part of rail transportation and beyond local regulation as a result of preemption in *NE Transrail*.

Petitioners assert that the bagging is the antithesis of the baling and wrapping in *NE Transrail*.

There, the STB determined that baling and wrapping construction and demolition (C&D) debris prior to rail transportation was integrally related to transportation because such operations “permit[] a wider variety of railcars to be used” and they “are not the sort of activities that would have value for any other purpose, as upon delivery, any wrapping would be removed and the bales would be broken up.” In this case, the packaging activities definitely add value to the wood pellets. The bagging occurs *after* the wood pellets have been successfully delivered by rail to the packaging facility. The wood pellets are being cleaned and packaged at the Upton Facility to complete the process of manufacturing and to allow for retail sale to the general public. This adds value.

Petitioners assert that the bagging operation is more like the “shredding” operation in *NE Transrail*. The Board decided that the “shredding” of C&D debris was not rail transportation.

NE Transrail argued that it was necessary to reduce the C&D at its transloading facility to two-foot lengths for loading onto rail cars. The Board ruled that:

NET did not adequately demonstrate that the shredding activity they propose would be integrally related to rail transportation. As noted at the oral argument, a shredder is not required to pack into rail cars material that has arrived at its facility packed into trucks. Additionally, the record indicates that shredding is a common practice in the landfill and waste management businesses and often facilitates recycling. Nor are we persuaded that the size of the facility would be so large that NET would need to use a conveyer belt just to move waste within the facility for transfer. *NE Transrail*, at 15 (footnotes omitted).

In the instant matter, like the shredding operation in *NE Transrail*, the wood pellet packaging activities are not “integrally related” to rail transportation. Instead, these activities are integrally related to manufacturing or processing for sale, as set forth above. The bagging could otherwise occur prior to rail shipment. In fact, Viridis has a history of bagging wood pellets prior to rail shipment and has characterized adding the option of outsourcing the screening, vacuuming, and bagging of its wood pellets to the Upton Facility as having a “positive impact on our plant’s production capacity.” See Exhibit 26, V.2, p.117. The wood pellet manufacturer identifies screening, vacuuming, and bagging as part of its wood pellet manufacturing process. See Exhibit 27, V.2, p. 120.

If the wood pellet packaging activities are not “integrally related” to rail transportation, then Section 10501(b) preemption is not applicable. Without the protection of Section 10501(b) preemption, the Town has the authority to regulate the wood pellet packaging activities under its zoning and other powers.

II. THE UPTON BULK TRANSFER TERMINAL ACTIVITIES ARE NOT BEING CONDUCTED BY A RAIL CARRIER AND ARE THEREFORE NOT PROTECTED BY SECTION 10501(B).

At the Upton Facility, the Petitioners assert that the bulk transfer terminal activities involving chemicals, wood pellets and other bulk goods are not being conducted by a “rail carrier” as required by Section 10501(b). The Board's jurisdiction extends to the rail-related activities that take place at transloading facilities if the activities are performed by a rail carrier or the rail carrier holds out its own service through the third party as an agent or exerts control over the third-party's operations. See, e.g., *Green Mountain RR Corp. v Vermont*, 404 F.3d 638,640-42 (2d Cir. 2005) (transloading and temporary storage of bulk salt, cement and non-bulk foods by a rail carrier preempted) and *Town of Milford, MA-Petition for Declaratory Order*, STB Finance Docket No. 34444 (Aug. 12 ,2004) (Board lacked jurisdiction over non- carrier operating a rail yard where it transloaded steel pursuant to an agreement with the carrier but the transloading services were not being offered as part of common carrier services offered to the public); *Hi Tech Trans. LLC Petition for Declaratory Order-Newark. NJ*, STB Finance Docket No. 34192 (Sub-No 1) (Aug. 14, 2003) (no STB jurisdiction over truck-to-truck transloading prior to commodities being delivered to rail carrier); *Town of Babylon and Pine Lawn Cemetery Petition for Declaratory Order*. STB Finance Docket No. 35057 (February 1, 2008) (no STB jurisdiction where tenant of licensed rail carrier, not rail carrier itself, had exclusive right to conduct transloading operation for construction and demolition debris and exclusive responsibility to construct and maintain facilities and to market and bill public for services.)

A pair of recent Board opinions frames the test. See *Town of Babylon and Pinelawn Cemetery, Petition for Declaratory Order*, STB Fin. Dkt. No. 35057, 2008 WL 275697 (Feb. 1,

2008)(“*Babylon*”); (finding the operations were not transportation by a rail carrier); *City of Alexandria, Petition for Declaratory Order*, STB Finance Docket No. 35157, 2009 WL 381800 (Feb. 17, 2009)(“*Alexandria*”) (finding there was transportation by a rail carrier).¹

Babylon (at page 5) and *Alexandria* (at pages 4-5) identify several factors for determining whether the rail carrier is sufficiently involved in the operations, including:

- (1) Whether the transloader is involved in the delivery of rail cars from the point of origin to the facility;
- (2) Whether the transloader was involved in the delivery to the final destination;
- (3) Whether the transloader was offering services to customers directly;
- (4) Whether the transloader pays any fees for use of the facility;
- (5) Whether the transloader has separate contractual relationships with customers for other arrangements at the facility;
- (6) Whether the marketing of the facility involves the transloader;

¹In *Texas Central Business Lines Corporation v. City of Midlothian*, 669 F. 3d 525 (5th Cir. 20102)(citation omitted), the Court of Appeals recently stated a more succinct test: (1) whether the rail carrier holds out transloading as part of its business, (2) the “degree of control retained by the [rail] carrier,” (3) property rights and maintenance obligations, (4) contractual liability, and (5) financing. The more specific factors identified in *Babylon* and *Alexandria* will be employed herein.

- (7) Whether the transloader has any contractual relationships relating to the facility with any of the shippers;
- (8) Whether the transloader sets, invoices for, or collects transloading fees charged to the shipper; and
- (9) Whether the railroad assumed liability or responsibility for transloading activities.

In applying these factors, Petitioners conclude that transloading at the Upton Facility is being performed by the Dana Companies. The Dana Companies “concentrate primarily in the business of motor carrier transportation and transloading” (See Exhibit 6, V.2, p. 19). The Dana Companies and affiliates include but are not limited to Dana Transport, Dana Rail Care, Grafton Upton Rail Care LLC, International Equipment Leasing, Inc., Suttles Leasing, and Liquid Transport Corporation. All of these entities hold themselves out as a Dana affiliate or part of the Dana Companies.

As set forth, above, the Dana Companies handle the transportation of food, pharmaceutical-grades, chemical, and petroleum products through a fleet of over-the-road liquid bulk tank trailers, container tanks, heavy duty drop-deck chassis, and liquid bulk rail cars. See Exhibit 17, V.2, p. 46. The Dana Companies also engage in inland transportation, equipment leasing, intermodal rail, intermediate bulk container systems, ocean carrier, repair and storage, spotting of trailers, and other over-the-road activities. In addition, the Dana Companies engage in the sale, rental, leasing, and service of yard trucks, totes, road trailers, rail cars, and terminal tractors, as well as supplies, and related spare parts. The Dana Companies offer rail car services

and specialize in the repair and maintenance of tractors, trailers, vans, straight trucks, flatbeds, and heavy duty equipment. See Exhibit 17, V.2, p. 46. Many of these activities have been observed at the Upton facility. See Exhibit 1, V.2, pp. 5-8.

When the factors identified in *Babylon* and *Alexandria* are applied to the transloading activities of the Dana Companies at the Upton Facility, serious questions are raised with regard to preemption for the G&U under Section 10501(b).

(1) Whether the transloader is involved in the delivery of rail cars from the point of origin to the facility? If the transloader is not so involved, as in *Alexandria*, this factor favors the rail carrier. In the instant matter, the “partnership” between Viridis and Dana Transport Rail Care “will enable the Company to ship its wood pellets in bulk to the Grafton Upton Dana Transport facility.” See Exhibit 26, V.2, p.117. This constitutes transloader involvement from the point of origin.

(2) Whether the transloader is involved in the delivery to the final destination? If the transloader is not involved, this factor favors the rail carrier. In the instant matter, the Dana Companies, specifically Dana Transport, have flatbed trucks that are routinely observed at the Upton Facility being loaded with pellets in preparation for shipment to final destination. See Exhibits 1, V.2, p. 6 and V.3, p. 16. Other Dana Companies ground transportation vehicles including Dana Transport truck tankers, Liquid Transport Corporation truck tankers, and Suttles Leasing truck trailers have been routinely identified at the Upton Facility with no other

reasonable purpose other than to deliver goods to their final destination. (See Exhibit 1, V.2, pp. 6-8. See V.3, pp. 4-10, p. 13)

(3) Whether the transloader is offering services to customers directly? If this is not occurring, and the rail carrier is offering such services, this factor favors the rail carrier. In the instant matter, Dana Trucking is advertised as being able to provide “full rail-to-truck distribution options” on the G&U website. The G&U website also states that the Upton Facility “benefits from the on-site 3PL [third-party logistics] trucking and transload services of industry-respected provider Dana Transport.” and also states that their “3PL partner has over 35 years of experience in bulk transport. Look to them to help you with: truck wash, 3PL Services, dry bulk, liquid bulk and ISO Containers.” See Exhibit 22, V.2, p. 81. The G&U aggressively promotes the Dana Companies transload, trucking, and other services.

Consistent with the advertising of the Upton Facility, truck tankers marked Dana Leasing have been observed at the Upton Facility accepting transloaded bulk material. See Exhibit 1, V.2, p. 7. See V.3, p. 13. Truck tankers marked DANA and DANA Leasing Systems are routinely observed being stored at the Upton Facility. See Exhibit 1, V.2, p. 7. See V.3, p. 10. In addition, liquid bulk rail cars marked Dana Railcare and dry bulk hoppers marked Dana Railcare are frequently seen at the Upton Facility. See Exhibit 1, V.2, p. 6-8. See V.3, p. 3, p. 10.

(4) Whether the transloader pays any fees for use of the facility? If the transloader does not, this favors the rail carrier. In the instant matter, the Dana Companies have rail cars (Dana Railcare), trucks (Dana Transport, Suttles Leasing), and tankers (Dana Transport, Liquid

Transport and Suttles) that are stored for extended periods of time at the Upton Facility. See Exhibit 1, V.2, pp. 6-8. The G&U markets truck storage as one of its services (Exhibit 22, V.2, p. 81). Thus, it is probable that the Dana Companies are paying a fee for storage at the Upton Facility. In addition, according to an FRA statement, (Exhibit 20, V.2 p. 64), the Dana Companies lease space from the G&U.

(5) Whether the transloader has separate contractual relationships with customers for other arrangements at the facility? To the extent the transloader does not, this favors the rail carrier. In the instant matter, the G&U has stated that the transloader, the Dana Companies (Grafton Upton Rail Care) are responsible for the “transfer of wood pellets into bags and the loading of wood pellets onto trucks for final delivery” as a G&U transloading subcontractor. The Dana Companies (Dana Transport) have reportedly entered into separate contractual relationships with Viridis involving wood pellets at the Upton Facility. Consistent with this reported Dana Transport-Viridis relationship, it is routinely observed that delivery of wood pellets to the facility occur in rail hoppers marked Dana Rail Care (See Exhibit 1, V.2, p. 6. See V.3, p. 3) and that bagged wood pellets are loaded onto flatbed trucks marked Dana Transport. See Exhibit 2, V.2, p. 10. See V.3, p. 16.

Other separate contractual relationships involving the Dana Companies for arrangements at the Upton Facility are likely. For example, Bunge rail tankers have been identified at the Upton Facility (see V.3, p. 14) and Bunge has a known relationship with Dana Transport (see Exhibit 28, V.2, p.123). The G&U has no known experience in the area of bulk chemical transport.

In addition, implementation of other non-transloading services marketed as being provided by the Dana Companies at the Upton Facility include trucking, truck wash, third-party-logistics (3PL) services, dry bulk, liquid bulk, and the provision of ISO Containers. These activities likely involve additional contractual relationships with Dana Company customers.

(6) Whether the marketing of the facility involves the transloader? To the extent it does not, this favors the rail carrier. In the instant matter, the marketing of the Upton facility by the G&U promotes the Dana Companies (Dana Transport) as the transloader and promotes Dana Transport as the G&U's third-party-logistics (3PL) partner able to provide a range of services other than transloading including: truck wash, 3PL Services, dry bulk, liquid bulk and ISO Containers. Other 3PL services advertised by the G&U include truck weighing, pellet packaging, warehousing, liquid bulk and pellet storage, and truck storage. See Exhibit 22, V.2, p.81.

The G&U does not hold out itself or GU Railcare as its transloading contractor in marketing the facility. Rather, the G&U holds out Dana Transport as providing transloading services and additional services at the Upton Facility. See Exhibit 22, V.2, p.81. James E. Howard, G&U legal counsel, has stated that GU Railcare does the transloading on the locus, and that GU Railcare is an affiliate of the Dana Companies, not the G&U. See Exhibit 6, V.2, p. 19.

(7) Whether the transloader has any contractual relationships relating to the facility with any of the shippers? If the transloader does not, this favors the rail carrier. In the instant matter, the Dana Companies have a reported contractual relationship with Viridis Energy (Viridis) and

Viridis is shipping wood pellets to the Upton Facility. (See Exhibit 26, V.2, p.117). On December 30, 2011, Viridis, a customer of the Dana Companies, issued a press release related to the wood pellet packaging activities. The following passages are excerpts from the press release:

Viridis Energy, Inc. announced today that, in an effort to reduce the costs of transporting wood pellets to the New England states, it has entered into a partnership with the Grafton Upton Railroad, a local short-line railroad, and Dana Transport, a national carrier and transportation service company....

The Grafton Upton Dana Transport facility is located in Upton, MA...

The Grafton Upton Railroad established a joint partnership with Dana Transport to develop the rail center in Upton, MA.

“Transferring the packaging of our bulk wood pellets to Dana Transport, not only reduces freight and spoilage cost, but has a positive impact on our plant’s production capacity.”
(Quote from Christopher Robertson, Viridis’ CEO)

“We look forward to developing a mutually beneficial alliance with Viridis.” (Quote from Ron Dana, Dana Transport’s founder and CEO) See Exhibit 26, V.2, p. 117.

Other contractual relationships at the Upton Facility involving the Dana Companies with shippers, including Bunge, are likely given the abundance of Dana Companies rail cars and trucks regularly observed at the Upton Facility including Dana Rail Care tankers, Dana Rail Care hoppers, Suttles Leasing truck trailers, Dana Leasing tankers, Liquid Transport Corporation tankers, Dana Transport tankers, and Dana Transport flatbed trucks. See Exhibit 1, V.2, pp. 6-8. See V.3, pp. 3-10, p. 13, p. 16.

(8) Whether the transloader set, invoices for, or collects transloading fees charged to the shipper? If not, this favors the rail carrier. In the instant matter, the G&U Tariff (see Exhibit 24, V.2, p. 90) states that, “charges for unloading of railcars to trucks and unloading trucks to

railcars at a GUBT will be determined and collected on an individual basis by the Terminal Operator.” The tariff also states that “[t]he Shipper and the Terminal Operator may agree upon the performance of services in addition to those listed above, at rates to be negotiated by the parties.” Michael Polselli, of the Dana Companies, has been identified by the Massachusetts Department of Environmental Protection (DEP) as the Upton Facility “Terminal Manager”. Gene Patten, of the Dana Companies, has been identified by the DEP as the Upton Facility “Terminal Operator Safety and Compliance Coordinator.” See Exhibit 29, V.2, p.125.

Importantly, the G&U Tariff, on page 6, sets the fees as a maximum, and allows for payment for other services at a rate to be negotiated. See Exhibit 24, V.2, p.90. Thus, the Dana Companies are ultimately setting the actual fees.

(9) Whether the railroad assumes liability or responsibility for transloading activities? If so, this favors the rail carrier. In the instant matter, the railroad GUBT Service Terms and Conditions (Exhibit 25, V.2, p. 110) states that, “liability for loss or damage to property or delay in transfer or shipment shall be that of a warehouseman only, as it may be further limited by the terms of this Document.”

Thus, it appears that a non-railroad entity, the Dana Companies, is conducting some or all of the activities on its own behalf² As a result, preemption is not applicable. Without the

² In fact, the Upton Facility looks a lot like the Dana Transport facility in Grafton, Massachusetts, which is not associated with a rail yard. See V.3, pp. 11, 15. The Grafton Dana Transport trucking facility is approximately five miles from the Upton Facility. See Exhibit 1, V.2, p. 7.

protection of Section 10501(b), the Town has the authority to regulate the activity under its zoning and other powers. The only way to be sure that the activities at the Upton Facility are being conducted by or on behalf of the G&U is by full disclosure of all of the agreements and all of the relevant terms and conditions of those agreements governing the such activities.

REQUEST FOR DISCOVERY

This dispute dates back to 2009. However, the Petitioners have not had the benefit of any discovery. Because the Town of Upton has not enforced its zoning by-law and other municipal regulations against the G&U, the Petitioners do not have access to any public records.

Specifically, the petitioners have not seen any of the G&U's agreements with its customers. The Petitioners do not know who designed, paid for, and owns the pellet facility. No documents showing the origin of the Operations Agreement have been produced. The degree of control - if any - that the G&U exerts over the Dana Companies has not been explored.

Accordingly, the Petitioners are seeking discovery in the context of this proceeding to determine the real relationship between the G&U and the Dana Companies. The Petitioners believe that discovery will confirm that the G&U and the Dana Companies have the same type of relationship that the New York and Atlantic Railway Company and Coastal Distribution LLC had in *Town of Babylon and Pinelawn Cemetery Petition for Declaratory Order*, STB Finance Docket No. 35057. There, the railroad was simply the shipper that Coastal Distribution used in

its waste disposal business. Here, Petitioners assert that the G&U is used by the Dana Companies to facilitate its trucking and other businesses.

Once the Petitioners have had the benefit of discovery,³ they will supplement this Petition and, based on the entire record, the Board should find that all or most of the Dana Companies' activities at the Upton Facility are not within the Board's exclusive jurisdiction.

REQUEST FOR WAIVER OR REDUCTION OF FILING FEE

Pursuant to 49 CFR 1002.2(e), the Petitioners hereby request a waiver or reduction of the filing fee of \$1,400.00. The filing fee has been submitted with this Petition for Declaratory Order.

As grounds therefor, Petitioners state that they have initiated this action in lieu of enforcement by the Town of Upton. The Planning Board of Upton, a duly constituted municipal agency of the Town, has voted to file a Petition for Declaratory Order. See Exhibit 30, V.2, p. 129. However, the Board of Selectmen of Upton, which has the authority to control access to legal counsel, has prohibited the Planning Board from engaging counsel (even if such counsel takes the matter *pro bono*) or acting *pro se*. See Exhibit 31, V.2, pp. 131-133. See Exhibit 32, V.2, p. 135. See Exhibit 33, V.2, p. 137. See Exhibit 34, V.2, p. 140-141.

³ A copy of the document request that the Petitioners are serving on the G&U and the Dana Companies with this Petition is annexed hereto as Exhibit A.

The Petitioners, all persons aggrieved, are seeking to vindicate the rights of the municipality. The Petitioners are neighbors of the Upton Facility. Waiver or reduction of the fee would be in the best interest of the public. Waiver or reduction of the fee would help to reduce the hardship caused Petitioners by municipal inaction.

Therefore, the Petitioners respectfully request a waiver or reduction of the fee.

Petitioners,
By their attorneys,

DATE: July 20, 2012

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. : 35652

**PETITION OF
DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH, CHERYL HATCH,
KATHLEEN KELLEY, ANDREW WILKLUND, AND RICHARD KOSIBA**

FOR DECLARATORY ORDER

**EXHIBIT A
FIRST REQUEST FOR PRODUCTION OF DOICUMENTS**

Mark Bobrowski
Blatman, Bobrowski & Mead, LLC
9 Damonmill Square, Suite 4A4
Concord, MA 01742
Attorney for Petitioners

Date: July 23, 2012

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. : 35652

**PETITION OF DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH, CHERYL
HATCH, KATHLEEN KELLEY, ANDREW WILKLUND, AND RICHARD KOSIBA
FOR DECLARATORY ORDER**

**REQUEST OF PETITIONERS DIANA DEL GROSSO, ET AL FOR PRODUCTION OF
DOCUMENTS TO THE GRAFTON & UPTON RAILROAD, THE DANA COMPANIES,
FIRST COLONY DEVELOPMENT COMPANY, INC., AND UPTON DEVELOPMENT
GROUP**

Pursuant to 49 C.F.R. § 1114.30, the Petitioners Diana Del Grosso, Ray Smith, Joseph Hatch, Kathleen Kelley, Andrew Wilklund, and Richard Kosiba (together referred to as the "Petitioners") hereby request that the Grafton & Upton Railroad, First Colony Development Company, the Dana Companies, and Upton Development Group produce and permit Petitioners to inspect and copy the documents described below. The production should be made on or before thirty days following the date of this Request at the offices of Mark Bobrowski, Blatman, Bobrowski & Mead, LLC, 9 Damon Mill Square, suite 4A4, Concord, MA 01742.

Definitions

For purposes of this Request, the following definitions shall apply.

1. Communication. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).
2. Document. The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term.
3. Identify (with respect to persons). When referring to a person, "to identify" means to give, to the extent known, the person's full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

4. Identify (with respect to documents). When referring to documents, "to identify" means to give, to the extent known, the (a) type of document; (b) general subject matter; (c) date of the document; and (d) author(s), addressee(s) and recipient(s).
5. References to Entities. When an entity is referred to, the request includes the entity and, where applicable, its officers, directors, employees, partners, members, corporate parent, subsidiaries, or affiliates.
6. Person. The term "person" is defined as any natural person or any business, legal or governmental entity or association.
7. Concerning. The term "concerning" means relating to, referring to, describing, evidencing, or constituting.
8. All and Each. The terms "all" and "each" shall be construed as all and each.
9. And/ Or. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
10. Number. The use of the singular form of any word includes the plural and vice versa.
11. The Dana Companies. The Dana Companies refers to Dana Transport, Dana Railcare, Liquid Transport Corporation, Suttles Truck Leasing, International Equipment Leasing, Dana Container, and Grafton Upton Railcare and includes its members, officers, employees, and other agents or representatives.
12. Facility. "Facility" refers to the Upton rail yard and transloading facility, pellet packaging plant, ancillary structures, and all property leased to G&U and/or others by Upton Development Group.
13. "Grafton & Upton Railroad" ("the G&U") refers to the Grafton & Upton Railroad and First Colony Group, and includes its officers, agents, and other representatives.
14. Lease. "Lease" refers to the Lease Agreements by and between the Grafton & Upton Railroad and Upton Development Group.
15. Operations Agreement. "Operations Agreement" means the Transload Facility Operations Agreement dated as of December 30, 2010 between the G&U and GU Railcare.
16. Structure. "Structure" refers to the silos, pellet packaging plant, and ancillary structures built or renovated at the Facility.
17. Town. "Town" refers to the Town of Upton, Massachusetts, and includes its agents or other representatives.

18. Commodities. "Commodities" refers to any type of material received at the Facility for transport to another location.

Instructions

1. All documents produced by defendants in response to this Request shall be produced as they are maintained in the usual course of business or shall be organized and designated so as to correspond to the Request to which the documents are responsive.

2. Where a claim of privilege is asserted in objecting to any item of this Request, the documents should be produced, except that it is not necessary to produce the portion of the document as to which the privilege is claimed. However, where privilege is claimed, defendants shall set forth a) the date, author, and subject matter of the document; b) the name and title of each person who prepared, received, reviewed, or has or had custody, possession, or control of the document; c) the identity and length of any attachments to the document; and d) the nature of the privilege being claimed or the ground for withholding the document.

3. If any responsive document has been, but no longer is, in the possession, custody or control of the party responding to the Request, the document shall be listed by listing all of the following information: a) the date of the document; b) a description of the subject matter of the document; and c) the name or names and addresses of each person who prepared, received, reviewed or otherwise has or had possession, custody, or control of the document.

4. Unless otherwise indicated, all requests call for the production of documents for the period from January 1, 2009 to and including the date of production.

Documents to Be Produced

1. Documents sufficient to establish how the Dana Companies came to be involved in the Facility.
2. Documents concerning or constituting or reflecting the earliest communication between the G&U and the Dana Companies.
3. All documents concerning the Lease of the Property by the G&U, including drafts thereof.
4. All documents concerning the Operations Agreement, including drafts thereof.
5. All documents concerning the cost of building the silos at the Facility, including but not limited to architectural and other professional fees, the cost of construction materials, and construction costs.

6. All documents concerning the payment of the cost of constructing all Structures at the Facility including all documents concerning the cost and installation of the sprinkler systems inside the pellet plant.
7. All documents concerning the cost of maintaining and operating the Facility.
8. All documents concerning communications with the other parties about the Dana Companies' actual or proposed use of the Facility.
9. All documents provided to the other customers, shippers or suppliers about the Dana Companies' proposed use of the Facility.
10. All documents concerning the Dana Companies' business plan for the Facility.
11. All documents concerning the G&U's business plan for the Facility.
12. Documents sufficient to establish the oversight of the Facility exercised by the G&U.
13. All documents constituting communications with the Town concerning the Facility.
14. All documents concerning air monitoring, dust levels, or any other environmental testing at the Facility.
15. All documents concerning complaints about the Facility, excluding communications from the Town.
16. All documents concerning the Dana Companies' ownership of railway cars used at or in the operation of the Facility.
17. All documents concerning the Dana Companies' leasing of railroad cars used at or in the operation of the Facility.
18. All logs or other records concerning (a) deliveries to or removed or shipped from the Facility; (b) the type of commodities delivered to or removed or shipped from the Facility; and (c) the weight of commodities delivered to or removed or shipped from the Facility.
19. All documents constituting or reflecting contracts between the Dana Companies and its customers for the shipment of commodities to or from the Facility
20. All documents concerning payments made by or due from the Dana Companies to the G&U in connection with the Facility.
21. All documents concerning payments made by or due from the G&U to the Dana Companies in connection with the Facility.

22. All documents concerning amounts paid to or due the Dana Companies on account of the shipment of commodities to or from the Facility.
23. For the period commencing January 1, 2009, all documents concerning amounts paid to or due the G&U on account of the shipment of commodities to or from the Facility
24. All payroll records relating to the employees of the Dana Companies working at the Facility.
25. All payroll records relating to employees of the G&U working at the Facility.
26. All documents concerning Loading Fees, as defined in the Operations Agreement including but not limited to documents concerning the setting of the amount of the Loading Fee and the collection of the Loading Fee.
27. All documents concerning the Usage Fee, as defined in the Operations Agreement, paid or due the G&U.
28. All documents concerning amounts paid to or due the G&U by customers of the Dana Companies for shipments to or from the Facility.
29. All documents constituting or reflecting or referring to communications between the Dana Companies and the G&U concerning conduct of or activities of the Dana Companies at the Facility.
30. All documents concerning marketing of the Facility by the Dana Companies.
32. All documents constituting or reflecting or referring to brochures or marketing materials, including but not limited to electronic materials and advertisements in trade publications, with respect to the Facility.
33. All documents concerning instructions or rules provided to customers concerning the delivery of commodities to the Facility, including but not limited to instructions or rules concerning the types of materials that can be delivered to the Facility.
34. All documents concerning written procedures for handling commodities received at the Facility.
35. All documents concerning or constituting communications between the G&U or the Dana companies on the one hand, and any federal, state, or local agency (including the Surface Transportation Board, but excluding the agencies of the Town of Upton) concerning the Facility
36. All communications with the Surface Transportation Board concerning the Dana Companies and all Communications with the Federal Railroad Administration concerning the Dana Companies.

37. All documents concerning insurance for the Facility.
38. All documents concerning claims for personal injury or property damage where the injury or damage was alleged to have occurred at the Facility.
39. All documents concerning disputes with customers of the Dana Companies or the G&U arising from or relating to the use or operation of the Facility, including but not limited to claims asserted by customers.
40. All documents concerning the collection from customers of the Facility of past due bills.
41. All documents regarding signage at the Facility.
42. All documents regarding the suitability of the location in Upton for transloading facilities or transfer stations.
43. All documents concerning the effect of the facility with regard to truck traffic.
44. All documents regarding lease agreements with Dana Companies.
45. All documents regarding lease agreements with G&U Railroad.
46. All Upton Development Group documents concerning lease, purchase and proposed use of the Facility.
47. All Upton Development Group documents concerning Dana Companies involvement on the Facility.
48. All documents regarding Private Track or Private Siding located at the Facility.

Petitioners,
By their attorneys,



Mark Bobrowski
Adam J. Costa
Blatman, Bobrowski & Mead, LLC
9 Damon Mill Square, Suite 4A4
Concord, MA 01742
978.371.2163

DATE: July 23, 2012

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO.: 35652

**PETITION OF
DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH, CHERYL HATCH,
KATHLEEN KELLEY, ANDREW WILKLUND, AND RICHARD KOSIBA
FOR DECLARATORY ORDER**

CERTIFICATE OF SERVICE

I, Mark Bobrowski, attorney for the Petitioners, hereby certify that I served a copy of Volumes 1, 2 and 3 of the Petition, and the electronic submissions required by 49 CFR 1104.3 to the following entities, by first class mail, postage prepaid:

First Colony Development Company, Inc.
929 Boston Post Road East
Marlborough, MA 01752

Grafton and Upton Railroad
50 Westboro Road
North Grafton, MA 01536

The Dana Companies
210 Essex Avenue East
Avenel, NJ 07001

Upton Development Group
31 Whitewood Road
Milford MA 01757

James E. Howard, Esquire
70 Rancho Road
Carmel Valley, CA 93924

DATE: July 23, 2012



Mark Bobrowski

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35652

**PETITION OF
DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH, CHERYL HATCH,
KATHLEEN KELLEY, ANDREW WILKLUND, AND RICHARD KOSIBA**

FOR DECLARATORY ORDER

VOLUME 2

Mark Bobrowski
Blatman, Bobrowski & Mead, LLC
9 Damonmill Square, Suite 4A4
Concord, MA 01742
Attorney for Petitioners

Date: July 23, 2012

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EXHIBIT 1

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO.

**PETITION OF
DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH, CHERYL HATCH,
KATHLEEN KELLEY, ANDREW WILKLUND, AND RICHARD KOSIBA
FOR DECLARATORY ORDER**

AFFIDAVIT OF DIANA DEL GROSSO

I, Diana Del Grosso, on personal knowledge, do hereby depose and state the following:

1. I own the property located at and reside at 15 Depot Street, Upton, Massachusetts (the "Del Grosso Property"). I have owned this property for approximately five years, and I have been a resident of Upton since 1994.
2. Ray Smith is the owner of property located at 9 Railroad Avenue, Upton, Massachusetts 01568.
3. Joseph Hatch is a tenant on property located at 17 Depot Street, Upton, Massachusetts 01568.
4. Cheryl Hatch is a tenant on property located at 17 Depot Avenue, Upton, Massachusetts 01568.
5. Richard Kosiba is the owner of property located at 6 Railroad Avenue, Upton, Massachusetts 01568.
6. Kathleen Kelley is the owner of property located at 17 Farm Street, Upton, Massachusetts 01568.
7. Andrew Wiklund is the owner of property located at 5 Railroad Avenue, Upton, Massachusetts 01568.
8. The Southern boundary of the Del Grosso Property is located approximately 50 feet from the tracks of the Grafton & Upton Railroad (the "G&U") and an estimated 200 feet from the wood pellet packaging facility at the Upton Rail Facility, which is located at 25 Maple Avenue, Upton, Massachusetts (the "Upton Facility"). The Upton Facility is reported to be a 38-acre site. The facility is located in Upton, Massachusetts and may be characterized as a bulk transfer terminal and wood pellet packaging plant along the G&U's short line railroad route.

9. I am a local business owner licensed by the Commonwealth of Massachusetts. My business is called “The Body Fixx” and it is located at 62 Main Street, Upton, Massachusetts. I have also been self-employed as a private investigator, d/b/a American Diversified Investigations, licensed by the Commonwealth of Massachusetts during the approximate period from 1990 to 2001.
10. From approximately 2001 to 2004, I was employed by the Town of Upton first as an administrative assistant and second as Local Building Inspector. During that time, I had a Construction Supervisor License and a Building Inspector License issued by the Commonwealth of Massachusetts. As Local Building Inspector, enforcement of the Upton Zoning By-Laws was a part of my official duties. As a result, I became familiar with the Upton Zoning By-Laws.
11. In 2010, I observed the pellet facility and silos being constructed at the Upton Facility in clear violation of Upton’s Zoning By-Laws. Specifically, these violations included the following:

Section 3.0 – Use Regulations, 3.1.3, Table A – Table of Principal Uses by District, packaging plant and/or trucking terminal

Section 4.0 – Dimensional Regulations 4.2.4 – Table C, Structure Height

Section 5.12.5 – Illuminated Signs
12. However, the local Building Commissioner has stated that the G&U is claiming preemption from local regulation. To date, to my knowledge, the Town has not received any formal plans pertaining to the Upton Facility. No local permits have been granted.
13. Since 2010, I have continued to monitor activities in the Upton Facility within view of the Del Grosso Property and Maple Avenue. I have also been allowed entry onto the properties of Vicki Markantonis, Varoujian Hagopian, and Kathleen Kelley to observe rail and trucking activities.
14. As I have observed at the Upton Facility, when wood pellets arrive to be processed, they arrive in rail Hopper Cars marked Dana RAILCARE. See the photograph at V.3, p. 3. I took this photograph from the second floor of my home on the Del Gross Property. I am aware that these are wood pellets due to the fact that after they arrive, the pellet plant shortly thereafter initiates operations, which I can hear on the Del Grosso Property. The Dana RAILCARE hopper cars remain on the tracks in front of the building for several days to weeks each time they arrive. After processing, I have routinely observed the pallets of wood pellets being loaded onto Dana Transport trucks parked on the South side of the pellet building toward the rear.

15. I have routinely observed Dana Transport truck tankers at the Upton Facility and such tankers appear to be stored at the Upton Facility.
16. I have routinely observed Dana Rail Care rail tankers at the Upton Facility loaded with liquid bulk goods for transfer at the Upton Facility. Dana Rail Care rail tankers are also being stored at the Upton Facility.
17. I have routinely observed Dana Transport leased truck tankers at the Upton Facility and have observed such tankers being attached to truck cabs and loaded with goods in preparation for shipment to a final destination.
18. I have routinely observed Liquid Transport Company truck tankers at the Upton Facility and such tankers are being stored at the Upton Facility.
19. I have routinely observed Suttles box car trucks and tankers at the Upton Facility. I took the photographs at V.3, pp. 4-6. I took this photograph from Maple Avenue, a public way.
20. In my opinion, contractual relationships involving the Dana Companies and other suppliers of bulk goods is likely given the abundance of Dana Companies rail cars and trucks that I have regularly observed at the Upton Facility. These include Dana Rail Care tankers, Dana Rail Care hoppers, Suttles Leasing truck trailers, Suttles Leasing Trucks, Dana Leasing tankers, Liquid Transport Corporation tankers, Dana Transport tankers, Dana Transport flatbed trucks, and Dana truck cabs and chassis.
21. In observing and photographing the Maple Avenue facility from the Maple Avenue entrance, I consistently see white DANA and DANA Leasing System tanks lined up and parked on the North side of the facility abutting an embankment. I took the photograph at V.3, p. 7. I took this photograph from Maple Avenue. I also see Liquid Transport tanks of a similar type. I took the photograph at V.3, pp. 8-9. I took these photographs from Maple Avenue. These tanks do not have trucks attached to them, they appear to be in storage and able to attach to a truck chassis.
22. Since May 2, 2012, there have been two (2) Dana RAILCARE rail tankers parked on the tracks in front of the Del Grosso Property, approximately 50 feet from my property line, and 20 feet from the porch of my neighbor, Vicki Markantonis, 14 Depot Street, Upton, Massachusetts. I took the photograph at V.3, p. 10. This picture was taken from my home's second floor on the South side of the Del Grosso Property. The DOT placards on these list #1648 (Methyl Cyanide). The tankers have been there since May 2, 2012; however, I observed them being moved forward and back one day apparently to accommodate other tankers.
23. In observing the Dana Transport Trucking facility in Grafton from Westboro Road, a public way, I have observed a similarity to the Upton Yard. The Grafton facility has

DANA, DANA Leasing Systems, Liquid Transport tanks, and Suttles trucks parked or stored on the property. I have also observed palletized bags of wood pellets stored on a flatbed truck at the Grafton Dana Transport facility. These activities also occur at the Upton Facility. I took the photographs at V. 3, p. 11. The Grafton photograph was taken from Westboro Road (top) and the Upton photograph was taken from Maple Avenue (bottom). The Grafton Dana Transport trucking facility is approximately five miles from the Upton Facility.

24. In observing the Dana Transport Trucking facility sign in Grafton from Westboro Road, a public way, I have observed a similarity to the Upton Yard sign. I took the photographs at V.3, p. 15. The Grafton photograph was taken from Westboro Road (right) and the Upton photograph was taken from Maple Avenue (right).
25. I took the picture of the wood pellet silos set forth in V.3 at p. 12. This picture was taken from by back steps on the South side of the Del Grosso Property.
26. I took the picture of the Dana leased tanker set forth in V.3 at p. 13. This picture was taken from Maple Avenue, a public way.
27. I took the picture of the Bunge tanker set forth in V.3 at p. 14. This picture was taken from by back steps on the South side of the Del Grosso Property.
28. All of the photographs set forth above, at V.3, pp. 3-15 were taken by me. I used my Nikon 14.1 Megapixel camera with a 21x zoom lens. In my opinion, all of the above-referenced photographs offer a fair and accurate representation activities and operations in the field.

Signed this 19th day of July, 2012 under the pains and penalties of perjury.



Diana Del Grosso

EXHIBIT 2

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO.

**PETITION OF
DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH, CHERYL HATCH,
KATHLEEN KELLEY, ANDREW WILKLUND, AND RICHARD KOSIBA
FOR DECLARATORY ORDER**

AFFIDAVIT OF SCOTT C. BOWER

I, Scott Bower, on personal knowledge, do hereby depose and state the following:

1. I reside at 22 Quarry Road, Whitinsville MA 01588. I regularly drive by the Grafton Upton Railroad on Maple Avenue as part of my commute to my work office in Hopkinton MA.
2. I took the picture of the Dana Transport flatbed truck loaded with palletized wood pellets set forth in V.3 at p. 14. This picture was taken from Maple Avenue, a public way.
3. The photograph set forth above, at V.3, p. 14 was taken by me. I used my Canon EOS REBEL T2i camera with a 28-135 zoom lens at a focal length of 135mm. In my opinion, the above-referenced photograph offers a fair and accurate representation of activities and operations in the field.

I declare that the foregoing is true and correct. Signed this 18th day of July, 2012 under the pains and penalties of perjury.


Scott C. Bower

EXHIBIT 3



Simplify Your Supply Chain

Experience the Strategic Location and Comprehensive Transload Services Provided by the N.E. Integrated Logistics Center

If you're looking for a new site to transload your rail products, or searching for a better economic option in freight transportation, the N.E. Integrated Logistics Center is your perfect supply chain solution. The NEILC offers Northeast shippers some of the most complete transload services between railcars, trucks, storage silos, and containers. Our three modern transload hubs can handle a full range of liquid and dry bulk, chemicals, agricultural commodities (including food grade), and waste products in almost any size shipment. The hubs are open Monday through Friday, 7:00 a.m. to 6:00 p.m., with after-hours and weekends on request. Features include full 3PL services, on-site management, offices, truck scales, paving, lighting, fencing, and multiple types of transfer equipment.



When you use an NEILC transload hub, the services don't stop at the end of the track. Industry-recognized 3PL partner Dana Trucking offers full rail-to-truck

distribution options all along our network. Our connection to the CSX mainline outside of Worcester, MA, allows us to move your freight throughout North America. Other 3PL partners provide coast-to-coast, door-to-door options in rail transportation that include railcar leasing and packaging solutions for rail and truck shipping. Do you require customized transload facilities? Our 140 Development Campus and other build-to-suit properties allow the NEILC to work with you to plan, design, and construct the infrastructure that perfectly meets your needs, on sites ranging in size from 5 acres to 100 acres.

The NEILC is owned, served, and operated by the Grafton & Upton Railroad, a privately-owned, independent short line and an affiliate of the First Colony Group. First Colony Group is a vertically-integrated development group able to fast-track projects and provide customers with greater flexibility and a friendly team when developing new rail business or helping to expand existing business.



Grafton and Upton's EZ Rate allows you to get your CSX connecting rail rate online, whenever and wherever you need it. Visit ShipCSX.com, click "Price Look-up" in the public tools menu.

NORTH GRAFTON



MASSPIKE TRANSLOAD HUB

Services Self-unloading transload, trucking, distribution, crossdock

Products Dry and liquid bulk

Features 25 live carspots, 15 in-transit spots, lighting, office, crossdock w/forklift

Highway Access I-90 (MassPike), Rtes 140, 20, 9

Build-to-Suit 5 acres

WEST UPTON



I-90/I-495 LOGISTICS HUB

Services Transloading, trucking, storage, weighing, trailer/car cleaning and inspection, heating

Products Dry and liquid bulk, chemicals, waste, agricultural

Features 60 live carspots, 100 in-transit spots, truck scale, transfer equipment, lighting, storage silos, office

Highway Access I-90 (MassPike), I-495, Rtes 140, 146, 122

Build-to-Suit 38 acres, shovel ready

HOPEDALE



SOUTH COUNTY DISTRIBUTION HUB

Join us as we develop our distribution hub and let us tailor the space to meet your needs. Our industrial building with indoor siding gives you the option of a totally enclosed operation for transloading or crossdocking from rail to truck.

Features 30 acres shovel ready, industrial zoned, 85,000 s/f building with indoor siding, 45' clear ceiling, lay down areas

Highway Access I-495, Rtes 140, 16, 85, 109

BUILD-TO-SUIT



140 DEVELOPMENT CAMPUS

Let First Colony Group help you create a new rail-served facility in our strategic New England location. Our planning, site design, and construction services can fast-track your project and get you up and running in record time.

Grafton 5 acres

Upton 73 acres

Hopedale 173 acres

Milford 5 acres

The N.E. Integrated Logistics Center is a new concept in providing rail-centric supply chain solutions using the logistics park model. In a 17-mile rail corridor the NEILC combines three multi-modal logistics hubs, 3PL services, build-to-suit development opportunities, planning, and construction services. The strength of the NEILC rests in the ability to situate customers at the site (or sites) that best suits their needs, all at the same price and with the same point of contact.

GRAFTON AND UPTON RAILROAD

50 Westboro Road, North Grafton, MA 01536 508-839-1701

Marketing & Pricing: Eric Moffett 860-627-8924 ericmoffett@graftonuptonrr.com



EXHIBIT 4



Terminal Locations	Credit Application	Contact Us
Recruiting	About Us	Home



- [Avenel Truck](#)
- [Dana Container](#)
- [Dana Rail Care](#)
- [Dana Rapid Rail](#)
- [Dana Transport](#)
- [Flagship Services](#)
- [I. E. Leasing](#)
- [Liquid Bulk](#)
- [NVO](#)
- [LTC](#)
- [Home](#)

DANA TRANSPORT, INC.

DANA TRANSPORT, INC's team of professionals shares a commitment to meet the individual transportation requirements of our customers. Our "can-do" attitude, combined with more than 35 years of liquid bulk experience, has helped make us one of the industry's leading carriers and service companies.

Our liquid bulk service capability includes food and pharmaceutical-grades, chemical and petroleum transport, both domestic and international. To help meet your total transportation requirements, we offer inland transportation, equipment leasing, intermodal rail services, intermediate bulk container systems (TOTES), ocean carrier services, equipment cleaning, repair and storage, spotting of trailers, and other necessary over-the-road activities. **DANA TRANSPORT** maintains a dedicated fleet of equipment to handle specialized products including temperature-controlled or pressurized cargos.

Dana Transport operates one of the industry's largest and most modern fleets of over-the-road liquid bulk tank trailers, 20-foot container tanks, heavy duty drop-deck chassis and liquid bulk rail cars.



[Dana Transport Info & Forms](#)



We are committed to Safe Practices! See our [Safety Policy](#).

[We are RCMS Certified!](#)

BULK TRANSPORTATION Contact:
Bob Cottrell
Phone: 1-800-733-3262
Fax: 1-732-750-1759
Email: BCottrell@DanaCompanies.com

SALES Contact:
Chuck Martinez
Phone: 1-800-733-3262
Fax: 1-732-750-1759
Email: CMartinez@DanaCompanies.com

The Dana Companies

210 Essex Avenue East, Avenel, NJ 07001
Voice: 732-750-9100, Fax: 732-636-7441

Questions or comments, please contact our [Webmaster](#).

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EXHIBIT 5



Terminal Locations	Credit Application	Contact Us
Recruiting	About Us	Home

1-800-733-DANA

- Avenel Truck
- Dana Container
- Dana Rail Care
- Dana Rapid Rail
- Dana Transport
- Flagship Services
- I. E. Leasing
- Liquid Bulk NVO
- LTC
- Home

COMPREHENSIVE RAIL CAR SERVICES

DANA RAIL CARE is destined to become your rail car service provider if you operate in the mid-Atlantic states and want quality service at competitive rates. Our 18-acre Wilmington, Delaware facility offers one of the most complete cleaning and repair services in the region with a large inventory of parts to ensure fast turnaround on repairs. Our highly-trained, professional crew is led by a management team with over 100 years of combined experience. To maintain our enviable EPA record, **DANA RAIL CARE** implements an in-house safety program that is one of the strongest in the business. With over 30,000 square feet of shop space under one roof, 12,000 feet of track and a dual monorail with a fully-automated cleaning rack for 6 tank cars, it's no wonder we're fast becoming the service vendor of choice for many Fortune 500 companies. There's never a switching charge and our facility is serviced by Conrail daily.



Trust DANA for fast, complete and accurate inspections of your equipment, at our facility or out in the field. We combine our thorough inspections with a strong understanding of what it takes to get the job done - at competitive rates. We follow the AAR format, subscribe to the NITL code, and meet all JIC (Joint Inspection Certificate) requirements. Our computerized billing system features specialized report generation options including status reports on demand.

SERVICE AREA:



DANA's RAILCARE facility is on the Conrail main line at the entrance to the nation's northeast rail corridor - an easy 2-day rail transit from any of the mid-Atlantic states. Mobile repairs are provided on a 24-hour emergency response basis within a 250 mile radius of our Wilmington facility.

CERTIFICATIONS:

DANA RAIL CARE offers superior service, with highly-trained personnel, including AAR Tank Car certified crews. The company operates according to standard M-1002 specifications for tank cars and has received its M-1003 QA certification.

CONTACT INFO

1280 RailCar Avenue
Wilmington, DE 19802
Phone: 1-302-652-8550
Fax: 302-652-7943
Product info: Call for limitations.

Jennings Nichols, Plant Mgr.,
JNichols@DanaCompanies.com

Ray Jones, Quality Assurance
RJones@DanaCompanies.com

Leroy Barton, Asst. Plant Mgr.
LBarton@DanaComanies.com

Mike Permenter, Inspection
MPermenter@DanaCompanies.com

Don Stratton, Billing
DStratton@DanaCompanies.com

The Dana Companies

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Questions or comments, please contact our [Webmaster](#).

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EXHIBIT 6

James E. Howard

Attorney at Law

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Suite 201
Charlestown, MA 02129
www.jehowardlaw.com

tel 617.886.9322
fax 617.886.9324
cell 617.905.6083
jim@jehowardlaw.com

August 18, 2011

Mark R. Reich
Kopelman and Paige
101 Arch Street
12th Floor
Boston, MA 02110

Dear Mark:

Pursuant to your request on behalf of the Board of Selectmen of the Town of Upton, I am writing to address certain issues raised by the Upton Planning Board concerning the rail transportation operations conducted by Grafton & Upton Railroad Co. ("G&U") at its yard in Upton. Specifically, the Planning Board has inquired generally about the arrangements by which G&U controls and conducts transloading activities at the yard. In addition, the Planning Board has requested information concerning the transloading of wood pellets. For the reasons outlined below, regulation by the Town with respect to the G&U transloading operations is federally preempted.

Your memorandum of June 18, 2009 provides an excellent discussion of the principles of preemption and their applicability in various situations. As we know from numerous decisions of the Surface Transportation Board and a number of courts, and as you concluded in your memorandum, preemption of local regulation occurs when rail transportation is being provided by or under the auspices of a rail carrier. Furthermore, as noted in your memorandum, transloading from rail cars to trucks constitutes rail transportation.

Ownership and Control of the Yard

As explained to the Planning Board at a recent meeting, and as disclosed to the Board of Selectmen two years ago, G&U leases the yard at Upton from the existing record owner, Upton Development Group, LLC. Jon Delli Priscoli, the owner of G&U, owns one third of the membership interests in Upton Development Group. The lease provides that G&U has full control over the yard, including the right to use the yard for rail operations and all other lawful purposes. Additionally, G&U has the right to construct improvements and to make alterations to the yard without any consent or approval of Upton Development Group, as well as having the obligation to pay all real estate taxes and utilities and to maintain insurance coverage on the yard. The Notice of Lease dated June 15, 2009 and recorded on June 16, 2009 in Book 44425, Page 159

recites that the lease has a term running in favor of G&U from July 15, 2008 through June 30, 2020 and grants to G&U an option to purchase the yard.

The history of the property explains in large part the current status of its ownership and control. As you know, the property was formerly used by the Town as a landfill. The Town had an opportunity to purchase the property several years ago, but it declined to do so. Upton Development Group acquired the property subject to an obligation to remediate certain environmental problems, which it has been diligently fulfilling. G&U has chosen not to exercise its option to purchase the yard until the remediation actions have been completed by Upton Development Group. In any event, as explained above, G&U has full control of the yard and the right to use the yard for rail transportation purposes. Indeed, the yard comes squarely within the statutory definition of "transportation". 49 U.S.C. 10102(9) ("transportation" includes (A) a . . . property, facility . . . related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use").

Transloading Generally at Upton

All of the transloading activities at Upton Yard are performed by Grafton Upton Railcare, LLC (the "contractor"), an affiliate of the Dana companies, subject to the control of G&U and in accordance with a Terminal Transloading Agreement dated December 30, 2010. Dana is an experienced and widely respected group of companies that concentrate primarily in the business of motor carrier transportation and transloading. The Agreement states that the contractor will provide transloading services "for and under the auspices and control" of G&U. Although the Agreement is confidential, G&U and the contractor have agreed that the enclosed summary of the terms and conditions of the Agreement may be disclosed to you and the Board of Selectmen and Planning Board for purposes of answering the questions raised by the Planning Board.

The form and provisions of the Agreement are based upon the agreement used by Norfolk Southern in The City of Alexandria, VA--Petition for Declaratory Order, STB Finance Docket No. 35157, decision served February 17, 2009, which is one of the decisions apparently relied upon by the Planning Board. The G&U Agreement goes even farther than the Norfolk Southern agreement, however, in order to meet the requirements of preemption. For example, the G&U Agreement explicitly prohibits the contractor from conducting any independent business activities at the yard and expressly ensures that the shippers availing themselves of transloading services are customers of the railroad and are charged for the transloading services in accordance with G&U's tariff.

Wood Pellets

The Agreement refers explicitly to the handling of wood pellets as part of the transloading services to be provided at the Upton Yard. Wood pellet producers have found it more economical and efficient to ship pellets in bulk rail cars, rather than to use trucks or attempt to ship bagged pellets in boxcars. At the present time, G&U has 3

customers that send bulk rail cars, each of which contains approximately 100 tons of pellets, to Upton for transloading.

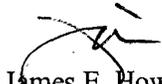
The only market--or end users--for wood pellets are residential customers, who burn the pellets in stoves for heat and who are obviously unable to take delivery of rail carloads of pellets. In order to deliver wood pellets, therefore, it is necessary to transfer the pellets from bulk rail cars into 40 pound bags that can be delivered to wholesalers or retailers by truck. Consequently, in order to meet the needs of its customers, G&U has arranged, through its contractor, to remove the pellets from the rail cars, put the pellets in bags and load the bags onto pallets that can be further distributed by flatbed truck. It is necessary to palletize the bags so that they do not break during the movement by truck.

As described above, G&U is "handling" wood pellets as part of the transportation service it provides to any customer wants to avail itself of such services. "Transportation" includes services related to the movement of property by rail, "including receipt, delivery, . . . transfer in transit, . . . storage, handling and interchange of . . . property." 49 U.S.C. 10102(9)(B). These services and the related charges are described in G&U's tariff. Bagging the pellets is an integral--indeed an essential--part of the transloading process required by the customer. Without bagging, it would be impossible to complete the transportation service. Significantly, the bagging process does not include any processing, fabrication or manufacturing that changes the nature or form of the pellets or that produces any byproducts.

The transloading of wood pellets at Upton is, therefore, substantially different than the "fabrication work" performed by a non-railroad entity for its own account in a case decided by the STB and 2004. Town of Milford, MA--Petition for Declaratory Order, STB Finance Docket No. 34444, decision served August 11, 2004. To the contrary, the pellet transloading activities are similar to the baling and wrapping of construction and demolition debris, which the STB determined to be an integral part of rail transportation and beyond local regulation as a result of preemption in New England Trans rail, LLC, d/b/a Wilmington & Woburn Terminal Ry.--Construction, Acquisition and Operation Exemption--In Wilmington and Woburn, MA, STB Finance Docket No. 34797, decision served July 10, 2007.

I hope that the foregoing explanation adequately addresses the questions of the Planning Board and, more importantly, leads them to share our conclusion that the transloading at G&U's Upton Yard is not subject to local regulation. Please let me know if you have any additional questions or need any further information.

Very truly yours,



James E. Howard

Enclosure
cc: Jon Delli Priscoli

Summary of Terms and Conditions of Terminal Transloading
Agreement dated December 30, 2010 between Grafton & Upton
Railroad Company and Grafton Upton Railcare LLC

1. Grafton Upton Railcare LLC ("Contractor") agrees to provide transloading services "for and under the auspices and control" of Grafton & Upton Railroad Co. ("G&U"), including the bagging of wood pellets, at the G&U rail yard in Upton.
2. The agreement applies to any commodities handled by rail to or from the yard in the sole discretion of G&U.
3. Contractor performs all necessary transloading services, including providing equipment and employees necessary for transloading and arranging for motor carriers.
4. Contractor bills and collects for the transloading services from G&U's customers as the agent for G&U. The amounts invoiced for the transloading services are set forth in G&U's tariff.
5. Contractor is prohibited from using the yard for purposes of any activities other than transloading for G&U customers, including a prohibition against conducting any independent business for contractor's own account.
6. Contractor may deal only with rail customers of G&U, i.e. customers that require a rail movement prior or subsequent to transloading services at the yard.
7. The agreement has a 2 year term, but G&U may terminate the agreement for any reason on 60 days' notice.
8. G&U is entitled to use the entire yard at any time for any purpose in its sole discretion so long as such use does not unreasonably interfere with the transloading activities.

EXHIBIT 7



**The Commonwealth of Massachusetts
William Francis Galvin**

Secretary of the Commonwealth, Corporations Division
One Ashburton Place, 17th floor
Boston, MA 02108-1512
Telephone: (617) 727-9640

GRAFTON UPTON RAIL CARE, LLC Summary Screen



Help with this form

The exact name of the Domestic Limited Liability Company (LLC): GRAFTON UPTON RAIL CARE, LLC

Entity Type: Domestic Limited Liability Company (LLC)

Identification Number: 001051724

Date of Organization in Massachusetts: 04/27/2011

The location of its principal office:

No. and Street: 25 MAPLE AVE.

City or Town: W. UPTON State: MA Zip: 01568 Country: USA

If the business entity is organized wholly to do business outside Massachusetts, the location of that office:

No. and Street:

City or Town: State: Zip: Country:

The name and address of the Resident Agent:

Name: MICHAEL POLSELLI

No. and Street: 25 MAPLE AE.

City or Town: W. UPTON State: MA Zip: 01568 Country: USA

The name and business address of each manager:

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
MANAGER	RONALD B. DANA	210 ESSEX AVE., E. AVENEL, NJ 07001-2045 USA

The name and business address of the person in addition to the manager, who is authorized to execute documents to be filed with the Corporations Division.

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
SOC SIGNATORY	RONALD B. DANA	210 ESSEX AVE., E. AVENEL, NJ 07001-2045 USA

The name and business address of the person(s) authorized to execute, acknowledge, deliver and record any recordable instrument purporting to affect an interest in real property

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
REAL PROPERTY	RONALD B. DANA	210 ESSEX AVE. AVENEL, NJ 07001-2045 USA

Consent Manufacturer Confidential Data Does Not Require Annual Report
Partnership Resident Agent For Profit Merger Allowed

Select a type of filina from below to view this business entity filinas:

ALL FILINGS

Annual Report

Annual Report - Professional

Articles of Entity Conversion

Certificate of Amendment



Comments

EXHIBIT 8

<i>LTC Terminals & Online Service Center</i>			Credit Application Info & Forms Proof of Delivery Quick Quote Sales Contact
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Ron Dana Announces the Purchase of Liquid Transport Corp

Avenel, NJ (Mar 15, 2006). Ronald Dana, founder and President of the Dana Companies, announced the purchase of Liquid Transport Corp (LTC) located in Indianapolis, IN. Established in 1936, LTC is a major bulk chemical and petroleum transporter. The addition of LTC to the Dana family of companies continues to broaden the services of both companies to better serve the liquid bulk industry throughout North America and the Caribbean. For over 30 years, Dana has been providing a broad range of services, which include chemical and petroleum transportation, equipment leasing and storage, intermodal services, logistics and railcar leasing.

The addition of LTC to the Dana family of companies, which now includes Dana Transport, Suttles Truck Leasing, International Equipment Logistics and its subsidiary, International Equipment Leasing, allows Dana to expand its capabilities in the area of tractor, trailer and driver enhancements. The extensive network of LTC terminals and locations will maximize contractor and driver efficiencies while minimizing idle time. This will produce important cost savings for both customers and consignees. Both Dana and LTC have long histories of premier service with commitments to excellence in the liquid bulk industry and both are active participants in the American Chemistry Council's Responsible Care Partnership Program.

Lanny Wilhelm, LTC's current President, will continue as President, and his senior staff will continue to operate LTC. Both will assist in the continuation of the long and proud heritage of LTC's service to both the company and the industry which it serves.

Both Mr. Dana and Mr. Wilhelm agree that the addition of LTC to the Dana family of companies offers the opportunity to more completely serve their customers in all aspects of chemical transportation, to maintain and grow a diverse and more capable driver base, and to continue Dana's tradition of safety, quality and service.

DANA...THE EXPERTS IN LIQUID ENGINEERING

[Home](#)

[Corporate Info](#)

[Senior Team](#)

[Job Opportunities](#)

[Contact Us](#)



RCMS Certified
Safety Policy

LTC Corporate Headquarters

8470 Allison Pointe, St 400, Indianapolis, IN 46250
Voice: 317-841-4200, Fax: 317-841-8259
Questions or comments, please contact our Webmaster
©Copyright 2010, Liquid Transport Corp

[Dana Companies](#)

EXHIBIT 9



[Avenel Truck](#)
[Dana Container](#)
[Dana Rail Care](#)
[Dana Rapid Rail](#)
[Dana Transport](#)
[Flagship Services](#)
[I. E. Leasing](#)
[Liquid Bulk NVO](#)
[LTC](#)
[Home](#)

INTERNATIONAL EQUIPMENT LEASING

International Equipment Leasing, Inc. is a part of the DANA Companies specializing in the packaging and transport of bulk liquids. Our ISO tank fleet is approximately 4,500 ISO tanks servicing food grade, pharmaceutical grade and chemical markets. Additionally, we offer over 1,000 drop frame chassis for the safe transport of loaded ISO tanks.

210 East Essex Avenue
 P.O. Box 482
 Avenel, New Jersey 07001
 Phone: 732.750.3122
 Fax: 732.750.3123

Our lease fleet offers the following types of equipment for your consideration:

- **IMO1 type ISO tanks** ranging from 14,300-25,000 liter capacities (3,778 – 6,605 US Gallons) with or without steam heating and insulation. Dedicated food, pharmaceutical and chemical tanks are available
- **IMO1/DOT51 type ISO tanks**, ranging from 14,200-17,500 liter capacities (3,751–4,723 US gallons) for PIH type products
- **Specialty IMO1 type tanks including tanks equipped with internal mixers** for products requiring movement while in storage, glycol heating systems for in-transit heating, internally lined ISO tanks for corrosive products, dual compartment tanks and baffled tanks for heavy products.
- **IMO5 type ISO tanks** for low or high-pressure gasses for the flouro-chemical and specialty gas markets
- **Special build IMO1/IMO5 tanks** to meet specific shipper requirements
- **Fixed tandem, spread axle, spread axle combo chassis, and tri-axle drop frame chassis** for the safest movement of loaded ISO tanks

Operating from 30 wholly-owned terminals nationwide, we ensure our equipment is positioned to meet a shipper's needs, maintained to the highest industry levels, and delivered safely and on-time, as promised. We focus on Safety, Quality and Service.

Both long and short-term leasing as well as rental arrangements are available. Lease arrangements can also be specifically tailored to meet a shipper's requirements.

In addition to ISO tanks and chassis, we offer leasing packages for **totes, road trailers, and rail cars.**

The Dana Companies

210 Essex Avenue East, Avenel, NJ 07001
 Voice: 732-750-9100, Fax: 732-636-7441
 Questions or comments, please contact our [Webmaster](#).

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EXHIBIT 10



Avenel Truck The Dana Companies have been in existence since 1970! The founder of our company, Ron Dana, was a lease operator hauling hazardous commodities in the late 1960's. Observing some inefficiencies and missing services for the customer he was hauling for, Mr. Dana bought some of his own trailers, and started contracting his services. His business sense and service offerings soon required the purchase of more equipment, the hiring of drivers and dispatch staff.

Dana Container DANA TRANSPORT INC was born.

Dana Rail Care From there, the purchases of tank wash facilities in key chemical markets gave Dana Transport a base of operations to extend their superior service offerings to large and small customers alike.

Dana Rapid Rail Observing customer's equipment shortages and understanding the problems of short and intermediate storage capacity needs without making capital expenditures, Mr. Dana offered tanks to customers on lease for various terms.

Dana Transport DANA LEASING was born.

Flagship Services Since that time, the companies have experienced substantial growth, but have also grown through acquisition. The Dana Companies are born. That list now includes:

I. E. Leasing [Dana Container](#). Specialists in public tank wash facilities.
[Dana Rail Care](#). Specialists in rail car cleaning and servicing.

Liquid Bulk NVO [Dana Transport, Inc.](#) Specialists in short and long-haul chemical common carrier transportation.
[International Equipment Leasing](#). Specialists in lease services and custom lease solutions.

LTC [Liquid Bulk NVO](#). Specialists in ISO container service to and from the Caribbean.
[Liquid Transport Corp.](#) Specialists in short and long-haul chemical common carrier transportation

Home Suttles Truck Leasing, LLC. Has been integrated into Dana Transport. They are specialists in short and long-haul chemical common carrier transportation.

The Dana Companies
 210 Essex Avenue East, Avenel, NJ 07001
 Voice: 732-750-9100, Fax: 732-636-7441
 Questions or comments, please contact our [Webmaster](#).
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EXHIBIT 11



Local man sees business opportunity with Grafton & Upton Railroad

By Aaron Wasserman/Daily News staff

Milford Daily News

Posted Jul 18, 2009 @ 11:28 PM

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What's this?

"There are a lot of little problems (that add up to) a lot of work," Delli Priscoli said, pointing out pavement over tracks along Rte. 16 in Milford and Hopedale, railroad crossings in shambles, and massive overgrown brush during a recent tour of the area.

In Hopedale, a homeowner paved a driveway over the railroad tracks.

"They had no easement, no permission to do that," Delli Priscoli said. "They filled over my track. The homeowner has to determine where access is and not effect the railroad."

To shield residents from the railroad, Delli Priscoli is putting in a large buffer of evergreens between the railroad yards and surrounding homes.

For a huge financial undertaking, though he would not disclose specifics of how much money it costs to revive the railroad, Delli Priscoli said it is all part of an entrepreneur's work.

"Entrepreneurs have visions, they have dreams," he said. "Mine is a successful, short-line railroad for transportation, rail service, and business."

The towns Delli Priscoli is working in should consider themselves lucky, he said.

"Look at the Upton fuel site," he said. "What else are you going to do with that? It has a landfill. We are capping the landfill and recycling it. ... It will all be beautiful landscape."

As for the recent issue with the odorous poles on the Upton property, Delli Priscoli is looking to move forward.

"There was hysteria created by a few people to mislead the public," he said. "But the Board of Health did their homework."

Ken Picard, chairman of the Upton Board of Selectmen, said Delli Priscoli is a professional.

"He's always been truthful with his dialogue," Picard said.

Selectmen are "curious" to see what comes of the railroad, Picard said.

UPTON — Jon Delli Priscoli knows a good time capsule when he sees one.

And that's why he is reviving the Grafton & Upton Railroad, which he considers an important part of the area's history and its key to economic stimulation.

Delli Priscoli bought the railroad in 2008 after it had been dormant for about 20 years. He is only the railroad's third owner since its construction in 1837.

Delli Priscoli, who lives in Sudbury, purchased the railroad from the Lucy Family, who owned the railroad after The Draper Company of Hopedale became Rockwell, Inc., and sold it to them in 1979.

"The older generation died out, and the (Lucy) kids were interested in the money, to put it bluntly," Delli Priscoli said of his purchase. "They didn't have the interest or the time to put into it."

Through the overgrown brush and broken railroad crossings, Delli Priscoli saw economic opportunity in the 16.5 miles of railroad across four towns. In all, the railroad property adds up to more than 100 acres in Milford, Upton, Grafton, and Hopedale.

"It will create jobs, it is an economic engine," Delli Priscoli said. "It's near I-495, MetroWest, there's a work force from the nearby technical school. There's housing. It's a great place for labor."

The railroad will carry goods from CSX, an international transportation company specializing in rail and rail-to-truck transport, to stops along the line. The Grafton & Upton trains will pick up or drop off the freight at the CSX train connections in Milford or North Grafton.

Delli Priscoli, who operated the Quincy Bay Railroad for about nine years, said he is more than just a "railfan."

His goal with the railroad, he said, is to combine his interest in rail with his day job as a commercial real estate developer into an "economic lifeline" for Milford, Upton, Grafton, and Hopedale.

"It's not a hobby, I'm not just a fan," he said. "There's a difference."

The Grafton & Upton Railroad is unique in that it has remained an independently owned short-line railroad, Delli Priscoli said. The majority of similar railroads have merged with bigger rail systems, he said.

The first phase of the revival, the stretch of rail from North Grafton to the West Upton yard, will be open by Labor Day, Delli Priscoli said. The stretch from West Upton to Hopedale should be done sometime in the fall, he said, and the Milford stretch is slated to take another year.

But accomplishing all this is no small feat.

"We are looking forward to discussions about the economic opportunities," he said. "But at the same time we want to safeguard the community and limit its impact. ... Everyone has a difficult time with change, but it is our job to navigate those concerns and try to help citizens of the town with change when it happens."

Milford selectmen Chairman Brian Murray said he is reserving judgment about the the railroad until he hears more from Delli Priscoli.

"I think the benefit depends on what the (railroad) is intended for," he said, adding Delli Priscoli has not had any correspondence with the board regarding the railroad. "If we are talking transporting materials, what kind?...are they hazardous? I have too many questions. ... It may be beneficial to the economy and community, but it may not be."

Delli Priscoli has said he will not be transporting anything new into the Milford area.

"Everything going on the railroad is already coming here by truck," he said.

Hopedale Town Coordinator Gene Phillips said Delli Priscoli has been "excellent" to deal with.

"He's come by my office on many occasions to keep us abreast on what he's working on," he said. "He did a lot of work to clear up the land behind town hall."

Phillips said Delli Priscoli has also asked the town to help him in talking to clients interested in leasing the Garrity Building, which is on the railroad's property in Hopedale. The building is an old foundry with a 50-foot clearance to the ceiling and only one story.

"He's a good guy," Phillips said of Delli Priscoli. "(The railroad) could bring several dozen jobs into town."

Delli Priscoli's venture also helps the tax base, Phillips said.

"As those parcels of land are cleaned and improved, it will help," he said. "He's a man of his word and everything he's told us, he's done. I don't think he's held any secrets from us."

Delli Priscoli, a father of three and a Charles Dickens fanatic, said he is anxious to get the railroad up and running.

"Just because a railroad is asleep, doesn't mean it's dead," he said.

Krista Perry can be reached at kperry@cnc.com or 508-634-7546.

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Comments (10)
Blackstone Valley
3 years ago
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It seems to me the last stretch is going to have some pretty tricky traffic implications. Last time that train ran there were a lot fewer people and a lot fewer cars. Any chance this could hook up with the Worcester and/or Forge Park commuter lines? Might help kill two birds with one stone

Blackstone Valley
3 years ago
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[Empty comment box]

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If I were town officials, I would be really pressing for a commuter rail option from the get-go. It might also present an opportunity for reverse commuting. People might hop the outbound train in Framingham at 9:00am to come to Grafton or Upton. The project should include a transportation component that would alleviate pressure on the roadways, not just for trucks but for cars too. Yes it is a private railroad, but it crosses public roadways. Has anyone asked Delli Priscoli whether he has plans for this?

Michelle
3 years ago
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EXHIBIT 12



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Bridgette Lucey This is me

President
Grafton & Upton Railroad
Worcester, MA



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ieffcabraser.com/dieselcancer

We have **Bridgette Lucey** listed as the President of Grafton & Upton Railroad,

which is listed under Interurban Railways in Worcester, MA.

About Bridgette Lucey

So far, Manta has 1 contact for Grafton & Upton Railroad in Worcester, MA. Do you work with Bridgette Lucey? [Join Manta](#) and connect yourself to this company.

Estimates show Grafton & Upton Railroad employs 2 people and has an annual revenue of \$210,000.

Visit the company profile for [Grafton & Upton Railroad](#) to see more contact information about the company or purchase D&B background and financial reports.

Similar Professionals

Judy Jonah
Owner of Mansfield Railroad Station
Mansfield, MA

Bridgette works at:

Grafton & Upton Railroad

375 Airport Drive # 4
Worcester, MA 01602-2265 [map](#)

Phone: (508) 752-5575

About:

Grafton & Upton Railroad in Worcester, MA is a private company which is listed under interurban railways. Current estimates show this company has an annual revenue of \$210,000 and employs a staff of 2.

0 0 0

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[Mansfield Railroad Station](#)
Interurban Railways in Mansfield, MA

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Companies by Location: Worcester, MA



EXHIBIT 13

Grafton & Upton Railroad CO

Grafton And Upton Railroad Company
929 Boston Post Road E
Marlborough, MA 01752-3728 [map](#)

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About Grafton & Upton Railroad CO

Website: Information not found | Phone: (508) 481-2023 | Is this your company? [Claim This Profile](#)

Business Categories

[Railroads in Marlborough, MA](#) | Railroads, Line-Haul Operating, Nsk | Line-Haul Railroads

Grafton & Upton Railroad CO in Marlborough, MA is a private company categorized under Railroads. Our records show it was established in 2008 and incorporated in Massachusetts. Current estimates show this company has an annual revenue of \$1 to 2.5 million and employs a staff of approximately 5 to 9.

Top 5 Website Redesign Tips



Company Contacts

Is this your company? [Claim This Profile](#)



Bridget M Lucey
Principal

[Search for more contacts](#)

EXHIBIT 14

DEED

Page: 7 of 8 2/11/2010 09:20 AM

UPTON FUEL & CONSTRUCTION CO., INC. a Massachusetts corporation with its principal place of business at Maple Avenue, Upton, Massachusetts 01568, for consideration paid of less than One Hundred (\$100.00) Dollars, grant to

UPTON DEVELOPMENT GROUP, LTD. a Massachusetts corporation with a place of business at 11 Grove Street, Hopkinton, MA 01748,

with QUITCLAIM COVENANTS

The land in Upton, Worcester County, Massachusetts, lying southeasterly of Hartford Avenue, easterly of Glen Avenue and westerly of Maple Avenue, and shown as Parcels 1, 2 and 3 on "Plan of Land in the Town of Upton, MA Owners: Upton Fuel & Construction Co., Inc." dated December 29, 2003, drawn by Blackstone Valley Survey & Engineering, Inc., recorded in Worcester District Registry of Deeds in Plan Book 9 18, as Plan 66, further bounded and described as follows:

Parcel 1

- BEGINNING** at a point on the southerly side of Hartford Avenue, which point is the northerly corner of the parcel herein described;
- THENCE** S. 70° 37' 21" E., 111.59 feet to a point;
- THENCE** S. 12° 07' 38" E., 176.31 feet to a point;
- THENCE** S. 19° 35' 00" E., 247.33 feet to a point, the last three courses being by Lot 3 shown on said plan;
- THENCE** S. 61° 33' 19" W., 252.99 feet to a point;
- THENCE** northerly running by the midpoint of the West River, 400 feet, more or less, to a point;
- THENCE** S. 57° 05' 30" W., 379.50 feet to a point;
- THENCE** S. 10° 54' 24" E., 637.00 feet to a point;

Registry Subclass: 000 Maple Ave., Upton, MA

EXHIBIT 15

NOTICE OF LEASE
AND
OPTION TO PURCHASE

Notice is hereby given, pursuant to M.G.L. Chapter 183, Sec. 4, that by lease dated July 15, 2008 (the "Effective Date"), UPTON DEVELOPMENT GROUP, LLC., a Massachusetts limited liability company with an office at 7 Barbara's Path, Upton, MA 01568 as "Landlord", leased to GRAFTON & UPTON RAILROAD COMPANY, a Massachusetts corporation with an office at 929 Boston Post Road East, Marlborough, MA 01752 as "Tenant", the land in Upton, Worcester County, Massachusetts located on the westerly side of Maple Avenue with all buildings thereon shown as Lot 1 on a Plan recorded in Plan Book 838, Plan 66 with the Worcester District Registry of Deeds and containing 33.14 acres of land, more or less according to said plan. For Landlord's title, see deed recorded in Book 38399, Page 382 with the Worcester District Registry of Deeds (the "Premises")

Said Lease is for a term or period of twenty (20) years and three hundred and fifty (350) days, commencing on July 15, 2008 and expiring on June 30, 2029.

Said Lease contains an Option To Purchase, whereby the Tenant has the right to purchase the Premises in accordance with the terms and conditions of the Option To Purchase, by giving the Landlord written notice exercising its Option To Purchase on or before April 1, 2013.

The provisions of said Lease (and the Option To Purchase) are incorporated herein by reference and made part hereof.

EXHIBIT 16

Dana Companies
 Reported Annual Revenue
 (millions of dollars)

<u>Min</u>	<u>Max</u>	
1.0	2.5	Dana Transport Inc in Crestwood
2.5	5.0	Dana Transport Inc in Charleston
5.0	10.0	Dana Transport Inc in Hope
1.0	2.5	Dana Transport Inc in Boykins
5.0	10.0	Dana Transport Inc in Paulsboro
0.5	1.0	Dana Transport Inc in Oxford
0.5	1.0	Dana Transport Inc in Swedesboro
2.5	5.0	Dana Transport Inc in Morrow
0.1	0.1	Dana Transport Inc in Morrow
5.0	10.0	Dana Transport Inc in North Grafton
0.0	0.5	Dana Transport Inc in Richmond
5.0	10.0	Dana Transport Inc in Beaumont
1.0	2.5	Dana Transport Inc in Greenville
10.0	20.0	Dana Transport in Nitro
10.0	20.0	Dana Transport Inc in Demopolis
2.5	5.0	Dana Transport Inc in Grayling
10.0	20.0	Dana Container Inc in Nitro
5.0	10.0	Dana Railcare in Wilmington
1.0	2.5	Dana Transport in Friendly
0.0	0.5	Dana Transport in Midland
1.0	2.5	Dana Transport in Detroit
0.0	0.5	Dana Transport in South Portland
1.0	2.5	Dana Transport in Summit Argo
5.0	10.0	Dana Transport in Charlotte
1.0	2.5	Dana Transport Inc in El Dorado
0.0	0.5	Dana Transport Inc in Wilmington
1.0	2.5	Dana Transport Inc in Moore
2.5	5.0	Dana Transport Inc in Panama City
2.5	5.0	Dana Transport Inc in Grayling
5.0	10.0	Dana Transport Inc in Saint Gabriel
0.5	1.0	Dana Container CO in Baltimore
20.0	50.0	Dana Tank Container Inc in La Porte
1.0	2.5	Liquid Transport Corp in Esko
5.0	10.0	Liquid Transport Corp in Saint Rose
1.0	2.5	Liquid Transport Corp in Greenfield
20.0	50.0	Liquid Transport Corp in North Charleston
1.0	2.5	Liquid Transport Corp in La Porte
0.1	0.1	Liquid Transport Corp in Freeport
5.0	10.0	Liquid Transport Corp in Stillwater
5.0	10.0	Liquid Transport Corp in Nitro
0.1	0.1	Liquid Transport Corp in Louisville
1.0	2.5	Liquid Transport Corp in Dallas
0.0	0.5	Liquid Transport Corp in New Castle
0.0	0.5	Liquid Transport Corp in New Castle
10.0	20.0	Liquid Transport Corp in Granite City
5.0	10.0	Liquid Transport Corp in Charleston
5.0	10.0	Liquid Transport Corp in Pleasant Valley
2.5	5.0	Liquid Transport Corp in Cincinnati
2.5	5.0	Dana/Suttles Truck Leasing in Grove City
5.0	10.0	Suttles Truck Leasing LLC in Curtis Bay
5.0	10.0	Suttles Truck Leasing LLC in Beaumont
1.2	1.2	Suttles Truck Leasing in Hope
0.1	0.1	Suttles Truck Leasing in Greensboro
1.0	2.5	Dana Suttles Truck Leasing in Nitro
5.0	10.0	Dana Transport in Charlotte
1.0	2.5	Dana CO in Savannah
2.5	5.0	Dana Transport Inc in Panama City
192.1	412.6	

Note: Revenues have been tallied from "Manta" internet website Company Profile pages

EXHIBIT 17



PRODUCTS & PRICING

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210 Essex Avenue East , Avenel , NJ , 07001 , United States

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Industry: **Car & Truck Rental**

SIC: Truck Rental And Leasing, No Drivers (7513)

NAICS: Passenger Car Rental (532111)

Revenue (tm): 30

Employees: 500

Description:

Dana Transport, Inc., together with its subsidiaries, provides liquid bulk transportation services in the United States and internationally. It handles the transportation of food and pharmaceutical-grades, as well as chemical and petroleum products through a fleet of over-the-road liquid bulk tank trailers, container tanks, heavy duty drop-deck chassis, and liquid bulk rail cars. The company also engages in inland transportation, equipment leasing, intermodal rail, intermediate bulk container systems, ocean carrier, repair and storage, spotting of trailers, and other over-the-road activities. In addition, it engages in the sale, rental, leasing, and service of yard trucks, totes, road trailers, rail cars, and terminal tractors, as well as supplies related spare parts; offers rail car services; and specializes in the repair and maintenance of tractors, trailers, vans, straight trucks, flatbeds, and heavy duty equipment. Further, the company provides liquid bulk N.V.O services to and from Puerto Rico, as well as other Caribbean locations. Dana Transport, Inc. was founded in 1872 and is based in Avenel, New Jersey. It also has trucking terminals, as well as repair and cleaning locations in Creola and Demopolis, Alabama; Wilmington, Delaware; Morrow, Georgia; Crestwood and Summit, Illinois; Hammond, Indiana; Ashland and Louisville, Kentucky; St. Gabriel, Louisiana; Baltimore, Maryland; N. Grafton, Massachusetts; Detroit and Grayling, Michigan; Charlotte, Fayetteville, and Greensboro, North Carolina; Avenel and Paulsboro, New Jersey; Cincinnati and Grove City, Ohio; Charleston, South Carolina; LaPorte, Texas; Auburn, Washington; Nitro, West Virginia; and Bayamon, Puerto Rico.

2012-06-12 23:13:16

Contacts - [VIEW DETAILS](#)

Vice President(s)

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EXHIBIT 18

PLANNING BOARD

Town of Upton



Massachusetts

E-Mail: planningboard@upton.ma.us
Phone: (508) 529-1008

1 Main Street, Box 10
Upton, Massachusetts 01568

Date: January 10, 2012

To: Railroad Fact Finding Committee

From: Planning Board

Subject: Response to "Railroad Fact Finding Committee" Question 004

This letter is in response to your Question 004 in which the Railroad Fact Finding Committee asked the following question:

(Question) With regard to the Maple Avenue wood pellet operation, what local zoning permits, approvals, variances, etc. would be required if it was determined that the wood pellet operation was not preempted from local regulations?

(Clarifying Note) It is desired that this question be answered by Upton Planning Board.

To date, the Planning Board has not received any applications or Plans pertaining to a Maple Avenue wood pellet operation. However, the Board was copied on a letter from James E. Howard (Counsel for G&U) to Mark R. Reich (Town Counsel) dated August 18, 2011. This letter briefly discussed a wood pellet operation at this site. Based on this limited amount of information provided by G&U, it is likely that the following would be required:

1. Special Permit (Board of Appeals): This site is located in a "Commercial and Industrial" zoning district. The Town Zoning By-Law Use Regulations (Section 3) states that a "plant for light manufacturing or packaging" located in a "Commercial and Industrial" zoning district requires a special permit with the Board of Appeals as the "Special Permit Granting Authority" (SPGA). The Town Zoning By-Law (Section 9.3, "Special Permits") provides additional details regarding this process.
2. Site Plan Approval (Planning Board): A wood pellet packaging operation would likely trigger a Site Plan Approval process with the Planning Board as the permit granting authority. The Town Zoning By-Law (Section 9.4, "Site Plan Approval") provides additional details regarding this process.
3. Variances (Board of Appeals): Since the Planning Board has not received an application or Plans, compliance of a wood pellet packaging operation with regard to topics such as the Town Zoning By-Law dimensional regulations cannot be determined at this time. If a wood pellet packaging operation was non-compliant with the Town Zoning By-Law, dimensionally or otherwise, then the applicant would be required to seek variances from the Board of Appeals to fulfill local permitting requirements. The Town Zoning By-Law (Section 9.2, "Board of Appeals") provides additional details regarding this process.

Planning Board Response to Question 004

4. Other Town Zoning By-Law Provisions: Additional Town Zoning By-Law provisions that would likely apply to a wood pellet packaging operation include, but are not limited to, the following Town Zoning By-Law Sections:

- Section 5.3, "Odor Dust and Smoke"
- Section 5.4, "Noise"
- Section 5.5, "Heat, Glare, Vibration, and Radiation"
- Section 5.6, "Exterior Lighting"
- Section 5.9, "Enclosure and Screening"
- Section 5.11, "Vehicular Access"

Additionally, there would likely be other Town entities involved in the local approval and monitoring process including the Conservation Commission, Code Enforcement and Board of Health. We will forward this question to them and provide their responses under separate cover.

Please do not hesitate to contact the Board if we can be of further assistance.

Sincerely,



1059012

Tom Davidson
Vice Chairman

copies:
Conservation Commission
Code Enforcement
Board of Health
Board of Appeals

EXHIBIT 19

IN RE DEN-L TRANS, INC.

In re: DEN-L TRANS, INC., Chapter 7, Debtor.

Case No. 09-41613.

United States Bankruptcy Court, D. Massachusetts.

January 11, 2010.

MEMORANDUM OF DECISION ON MOTION BY BROKER RICHARD A. SEDER TO ALLOW BUSINESS BROKER FEE

JOEL B. ROSENTHAL, Bankruptcy Judge

This matter came before the Court for a non-evidentiary hearing on the Motion by Broker Richard A. Seder to Allow Business Broker Fee [# 90] (the "Fee Application"), the objections by Imperial Capital Bank¹ [# 94], and the Chapter 7 Trustee [# 97]. Seder filed a reply [# 98] to which his affidavit ("Seder Affidavit II") was appended; at the hearing the Chapter 7 Trustee filed copies of various emails [# 101]. At the hearing the Court asked each party whether an evidentiary hearing was needed or requested; each declined the invitation and represented that the facts were not in dispute. The Court understands that to mean that, although the averments in the various pleadings except the Seder Affidavit are not evidence, the parties did not generally dispute their accuracy. Thus the facts are drawn from the pleadings and representations of counsel made at oral argument with some inconsistencies noted as appropriate.

FACTS

On July 20, 2009, approximately three months after the Debtor filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code, the Court directed the appointment of a Chapter 11 trustee. David Nickless was appointed and approximately one month later sought the appointment of Richard A. Seder as a "business broker." The Motion for Authority to Employ Business Broker [# 49] (the "Motion to Employ") is rather sparse in its description of the services to be rendered by Seder and states in relevant part:

3. The Debtor is engaged in the business of "trans-shipping" plastic powder and pellets and is the owner of real estate located at 41 Main Street, Oxford, MA comprised of approximately 8.12 acres and improved with a pre-fabricated steel frame building (hereinafter the Real Estate).

4. Your Trustee wishes to employ Richard A. Seder and Seder Advisory Services, 57 Oak Hill Road, Worcester, MA 01609 to sell the company assets.

6. Compensation for said Business Broker will be 6% but only if successful in selling the company assets.

Seder's affidavit in support of his employment ("Seder Affidavit I") states he had no connections with the debtor, creditors, or other parties in interest. The Motion to Employ was allowed without objection on September 8, 2009. On September 28, 2009 the Trustee filed an Expedited Motion to Employ Francis J. Trapasso as Auctioneer [# 56] (the "Auctioneer Motion"). In the Auctioneer Motion the Trustee represented that:

5. The Trustee has been negotiating with a trucking company for the sale of some of the assets of the Debtor and the lease or purchase of the real estate owned by the Debtor. As of this writing, the negotiations have not resulted in any definitive agreement.

6. Your trustee wishes to employ Francis J. Trapasso of Francis J. Trapasso & Associates to auction some or all of the assets of the Debtor. Sale of the real estate would be subject to a reserve set by mutual agreement between the Trustee and Imperial.

7. Expedited determination is requested as the Trustee has committed to conduct an auction by the end of October and the auctioneer has indicated that October 29, 2009 is an available date.

The certificate of service does not indicate the Auctioneer Motion was served on either

Supporting Document to Petition
Dana Involvement at the Maple Avenue Facility

Seder or Dana Transport, Inc. ("Dana Transport"), the trucking company referred to in the Auctioneer Motion.

The following day the Trustee filed a motion to sell the Debtor's assets at a public auction [# 58] (the "Sale Motion"). In the Sale Motion the Trustee stated:

3. The Debtor's assets include, but are not limited to, over eight acres with hundreds of feet of frontage on a railroad siding and improved with a steel frame building located at 41 Main Street, Oxford, MA (hereinafter the Real Estate), a number of tractors and bulk delivery trailers, and various other pieces of fixtures, furnishings, and equipment.

4. In August 2009 the Trustee engaged Richard Seder to sell the Debtor's assets as a going concern. Although there has been some interest in the acquisition of some or all of the assets of the Debtor and conducting an operation in place, no acceptable offer has been received at this time.....

8. Due to the current depressed state of the real estate market the Trustee and Imperial have agreed that a reserve price will be set for the sale of the Real Estate. All other assets will be sold at absolute auction....

Imperial, which held a security interest in the Debtor's real estate,² filed a limited objection to clarify, among other things, that only the auctioneer's compensation and the Trustee's fees and expenses were to be charged against the sale proceeds. The limited objection was not served on Seder or Dana Transport.

According to the Seder Affidavit II, Seder did not receive service of either the Sale Motion or the proposed order of the sale. He also testified in the Seder Affidavit II that "I was unaware of any terms in either pleading that would limit or eliminate my fee as the Debtor's business broker. I did, however, receive notice of sale with respect to the Auction." Moreover, in the same affidavit, Seder stated that he informed an employee of Dana Transport about the auction and urged that a representative of Dana Transport attend the auction. Specifically the Seder Affidavit II states:

8. On October 26 or October 27, 2009, I called Poselli [the transport manager of Dana Transport] to inquire whether Dana intended to bid at the Auction, and to advise Dana of the date of the Auction. Poselli told me that neither he nor anyone else at Dana had received notice of the Auction; I then recommended that he and/or Mr. Dana attend the Auction, and advised Poselli regarding the bidding terms of the Auction, including the requirement that Dana provide an acceptable bank check in order to participate in the Auction.

At the hearing the Trustee produced copies of emails which he says indicate that Seder and Dana Transport were served with the "sale documents." The attachment line of the email indicates that "59 Sale Ntc.pdf" and "58 Sale-Mtn.pdf" were attached to the October 1, 2009 email sent to Ron Dana, with copies to Michael Poselli and Seder, although the email produced to the Court were produced without the actual attachments. At the hearing, Seder represented that he had no recollection of the emails but, as he stated in his affidavit, was aware of the auction.

According to Seder, at his urging Dana Transport attended the auction and was the successful bidder, bidding \$1 Million for the Debtor's real estate and for certain personal property. The sale was consummated by an affiliate or designee of Dana Transport. At or around the time of the sale, the Court granted the Trustee's motion to convert the case to one under chapter 7. The Chapter 11 Trustee was appointed as the Chapter 7 Trustee.

Seder now seeks a \$60,000 commission based on 6% of the \$1 Million sale price. Both the Trustee and Imperial Bank object to the payment of any money to Seder.

POSITION OF THE PARTIES

In support of his application for compensation, Seder states that his engagement as a business broker to sell the Debtor's assets covered the sale of both the real estate and personal property. Although recognizing that the engagement also required that he be successful in selling the assets, Seder argues that his activities were "instrumental" in causing the sale of the Debtor's real estate. The Court notes that Seder did not proffer any evidence as to whether he is licensed as a real estate broker by the Commonwealth.

Supporting Document to Petition
Dana Involvement at the Maple Avenue Facility

Imperial opposes paying any amount to Seder because it argues he was not engaged to sell the real estate and cites *In re Pollack*, [22 B.R. 673](#), 676 (Bankr. D. Mass. 1982), for the proposition that a bankruptcy trustee cannot "seek to retain a broker to sell real estate that is subject to the secured claim and lien without being specific as to the disposition or potential disposition of such real estate asset." At oral argument Imperial's counsel stated that "the Trustee confirmed with me that the motion to employ the broker was only with respect to the debtor's business—the business assets." At oral argument Imperial's counsel argued that the broker was actually working for Dana Transport and it was Dana Transport which benefitted from Seder's services. Additionally Imperial argues Seder was not successful in bringing the sale to fruition and that payment of a commission to him would violate the terms of the sale order which provided only for deductions for the fees and expenses of the auctioneer and the Trustee and for unpaid real estate taxes. Imperial argues that Seder fares no better under Massachusetts law because his services were not the "efficient or effective means of bringing about the sale" and in light of the engagement's requirement that he be "successful in selling the company's assets" Massachusetts law cannot supplant the terms of an express agreement as this Court noted in its decision in *In re Weston Nurseries*, 2008 WL 1733362 (Bankr. D. Mass. April 14, 2008).

The Trustee responded to Seder's fee request by noting that when he first communicated with Seder, shortly after the Trustee's appointment, the Trustee informed Seder "what Seder would be required to do if he were to be employed as a business broker." The Trustee's response, however, does not provide any further specifics of what the Trustee told Seder his role would be. At the hearing the Trustee reiterated that pursuant to the Motion to Employ Seder, Seder was employed as a "business broker, not a real estate broker, and not an asset broker...." Although not denying, and in fact confirming that Seder expended considerable energy in attempting to put a deal together, the Trustee denies that Seder was successful in obtaining an offer for the sale of the business. Moreover, at the hearing the Trustee noted that there was no equity in the real estate and that Imperial was still had a claim of approximately \$1.2 Million to \$1.3 Million.

DISCUSSION

Unlike *Weston Nurseries*, where the Court had a copy of the contract, namely the Exclusive Sales Agency Contract which governed the conditions under which the broker would receive a sales commission, the Court has not been provided with any document or documents that describe the terms of the broker's engagement beyond the bare bones recitations in the Motion to Employ. Thus the first issue is what are the "company assets" which, according to the Motion to Employ, Seder was engaged to sell. The answer seems to be that any asset owned by the company, whether real or personal, is included. Although Imperial and the Trustee may have had a discussion that only non-real-estate assets were to be covered by the broker's engagement, there is nothing before the Court to indicate such a limitation was intended. Nor is there anything in the Motion to Employ to indicate that the company had to be sold as a going concern in order for Seder to receive a commission for selling the assets.

The Motion to Employ, however, requires that Seder be "successful" in selling the company's assets. Again there is no further guidance as to what constitutes success in this context. Giving the word "successful" its usual meaning, namely that of "accomplishing an aim or purpose," Oxford Dictionary On-Line 2009 Edition, the Court finds that Seder was not successful. He did not succeed in accomplishing the sale; the auctioneer did. Consequently, although apparently there was no broker contract signed by the Trustee and Seder, the terms of the engagement, albeit sparse, are set forth in the Motion to Employ and the Court will not look to Massachusetts law to supplement what the parties agreed would control the engagement.

Supporting Document to Petition
Dana Involvement at the Maple Avenue Facility

Finally, it is not unjust to leave Seder without a commission from the sale. As noted by Imperial but not disclosed by Seder until the Seder Affidavit II,³ Seder had been employed by Dana Transport to assist it in setting up a rail transfer operation in Upton, Massachusetts. The Court is not aware of the terms of that employment nor is it within this Court's jurisdiction to determine whether he is entitled to any compensation from Dana Transport as a result of having brought it to the sale.

CONCLUSION

For the foregoing reasons, the Motion by Broker Richard A. Seder to Allow Business Broker Fee [# 90] is DENIED.

A separate order shall issue.

Footnotes

1. Imperial is now known as City National Bank but the Court will continue to refer to it as "Imperial" in this decision.

[Back to Reference](#)

2. Imperial also holds a security interest in real estate of Riverside Real Estate, LLC, an entity affiliated with the Debtor. Riverside is also a debtor in Chapter 11 proceedings before this Court, Chapter 11 Case No. 09-41610. The Trustee also serves as the Chapter 11 trustee in the Riverside case.

[Back to Reference](#)

3. In the Seder Affidavit II, Seder stated that prior to August 2009, Dana Transport employed him as an advisor to assist it in setting up a rail transfer operation in Upton, Massachusetts. It was as a result of that employment that Seder arranged the initial meeting with the Trustee. Seder Affidavit II at ¶¶ 2 and 3.

[Back to Reference](#)

EXHIBIT 20

ATLANTIC NORTHEAST

RAILS & PORTS

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England, the Maritimes, & eastern Québec.
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Issue 11#06B 12 July 2011

Article unchanged from e-bulletin.***Blue type in article: changes from e-bulletin.****Blue in table and header: new article.****REGIONAL ISSUES**

PW: Gabelli buys more stock.

Provport-PW-ST: Limestone move to Bow.*

PAS: Wants to add more vehicle spots to auto terminal in Ayer.**

ST: Hiring engineers to be stationed at Ayer.*

NEW YORKNYOG: Ogdensburg Bridge and Port wants to end contract.* *Complete chronology.**

NYOG: Parties talk. OBPA unhappy with Knowlton.

CONNECTICUT

PW v HRRC: PW withdraws filing at STB since it can serve Tilcon via Metro-North.*

MAINE

MDOT: Legislature funds IRAP, but cuts highway capital projects by \$230 million.*

MMA-MNR: Sharing haulage trains. Schedules.

MMA: Local to buy Katahdin mills? No wood?*

MASSACHUSETTS

CSXT: Meets again with citizens to discuss concerns about Westborough Transflo site.*

GU: DEP finds complying with state laws.*

GU: Update on customers. Pellets starting.**

PAS: Agreement to upgrade ConnRiver.

PAS: Wants to add more vehicle spots to auto terminal in Ayer.**

NEW HAMPSHIRE

MBRX v ST: State contract law not pre-empted.*

MBRX v ST: Judge pushes a mediated solution.*

RHODE ISLAND[See *Regional* limestone move.]**VERMONT**

Vermont salt: Contracts renewed with 2% increase.*

MARITIMES/QUÉBEC

CN: Tested longer trains into Maritimes.*

Canso: Melford proponents update project.

Montreal hub: Montreal drawing western Mediterranean traffic via hub ports there.*

Belledune: Seeking operator for cargo ferry link to Argentina.*

RAIL SHIPPERS/RECEIVERS

A cross-reference to companies mentioned here.

PEOPLE, POSITIONS, EVENTS

[No report.]

FROM THE PUBLISHER**On the road, again**

To my delight, I have found I can publish the

Common abbreviations: BCLR - Bay Colony RR, BML - Belfast & Moosehead Lake RR, CBNS - Cape Breton and Central Nova Scotia Ry, CCCR - Cape Cod Central RR, CCRR - Claremont Concord RR, CMAQ - congestion-mitigation or air quality (money from the US federal government for these purposes), CN - Canadian National Ry, CNZR - Central New England RR, ConnDOT - Connecticut Department of Transportation, CP - Canadian Pacific Ry, CSO - Connecticut Southern RR, CSRX - Conway Scenic RR, CSXT - CSX Transportation (railroad), EMRY - see NBSR, FHWA - Federal Highway Admin., FRA - Federal Rail Admin., FRTC - Fore River Transportation Co., FTA - Federal Transit Admin., GU - Grafton & Upton RR, GWI - Genesee & Wyoming Inc, HRRC - Housatonic RR, MassDOT - Massachusetts Department of Transportation, MBCR - Mass. Bay Commuter RR, MBRX - Milford-Bennington RR, MBTA - Mass. Bay Transportation Authority, MC - Massachusetts Coastal RR, MCER - Mass. Central RR, MDOT - Maine Department of Transportation, MERR - Maine Eastern RR, MMA - Montréal, Maine and Atlantic Ry, MNRY - see NBSR, MPO - Metropolitan Planning Organization, MTQ - Québec Ministry of Transport, NAUG - Naugatuck RR, NBDOT - New Brunswick Department of Transportation, NBSR - New Brunswick Southern Ry, parent of MNRC, Maine Northern Railway and EMRY, Eastern Maine Railway, NECR - New England Central RR, NEGS - New England Southern RR, NHCR - New Hampshire Central RR, NHDOT - NH Department of Transportation, NHN - New Hampshire Northcoast RR, NNEPRA - Northern New England Passenger Rail Authority, NS - Norfolk Southern Ry, NSDOT - Nova Scotia Department of Transportation, PAR - Pan Am Railways - parent of Maine Central RR, Portland Terminal RR, Boston & Maine, all leased by ST - Springfield Terminal Ry, PAS - Pan Am Southern Railway, joint venture of Pan Am and Norfolk Southern, PVRR - Pioneer Valley RR, PW - Providence & Worcester RR, QCR - Quebec Central Ry, RIDOT - Rhode Island Department of Transportation, Seaview-Seaview Transportation Company, SLQ - St. Lawrence & Atlantic Ry (Québec), SLR - St. Lawrence & Atlantic RR, ST - see PAR, TIRR - Turner's Island LLC, TEU - twenty-foot equivalent unit (measure of container traffic, equal to a 20x8x8 foot box), VAOT - Vermont Agency of Transportation, VRS - Vermont Rail System (Green Mt. RR Company GMRC + Vermont Ry VTR + Clarendon&Pittsford RR CLP + Washington County RR WACR), WHRC - Windsor and Hantsport Ry.

newsletter while in New Hampshire. Next stop:
Long Island.

- Chop Hardenbergh Next formal issue 26 July

REGIONAL

PW: GABELLI OWNS MORE

5 July, DC. **MARIO GABELLI HAS RAISED HIS STAKE IN PW**, according to an SEC Form 13D filed at the Securities and Exchange Commission this day. In 2009, funds managed by Gabelli bought 6.29% of the common stock [see 09#10A]. The July 2011 filing shows ownership of 8.36% [an increase of about 2%, which, on a per share price of \$14.45 on 6 July, translates into \$5.83 million].

Other significant owners

The Proxy Statement for the Annual Meeting in April 2011 listed Steinberg Asset Management at 11.1% of the common stock, Keeley Asset Management 7.1%, and Linda and Robert Eder (chair) at 17.5% of the common stock. The Eders also own 78.1% of the preferred, and voting control of the corporation. {SEC website}

PROVPORT-PW-ST: LIMESTONE*

1 July, Bow. **THE FIRST CARS OF LIMESTONE ARRIVED FOR THE NEW SCRUBBER**. An ST crew on the five PW locomotives moved the 60+ aluminum gondolas symbolled PWBO from Worcester around 0100AM, passed through Ayer approximately 0400AM, Nashua 0600AM, and arrived at the power station at 0815AM. {Martin Butler in New PW e-mail group}

PW moved the cars from Provport, which received the limestone originating in Atlantic Canada. [see 11#04A].

Storage

Public Service of New Hampshire (PSNH) has 'arranged for the delivered limestone to be stored in Merrimack Station's new Limestone Storage Silo. Construction on the Clean Air Project continues and is proceeding well. We have not yet formalized plans for testing the scrubber, but plan to do so before it goes live in early 2012.' {e-mail from PSNH spokesperson Matt Chagnon 5.July.11}

PAN AM: HIRING*

20 June, Ayer. **THE RAILROAD IS ADVERTISING FOR LOCOMOTIVE ENGINEERS** with at least one year's experience as a conductor. It told the Brotherhood of Locomotive Engineers that the hires would work out of Ayer.

'These union jobs fall under the BLET's Delaware & Hudson/Springfield Terminal General Committee of Adjustment.'
{BLET e-mail to ANR&P}

NEW YORK

VRS: TERMINATE NYOG?*

21 June, Ogdensburg. **THE OGDENSBURG BRIDGE AND PORT AUTHORITY WANTS TO TERMINATE A CONTRACT WITH THE NEW YORK AND OGDENSBURG RAILROAD COMPANY**, claiming the railroad is in breach of contract regarding maintenance of an out-of-service locomotive, one of two owned by OBPA. Executive Director Wade A. Davis declined to provide details, or a copy of the termination letter, which was sent this day.

VRS response

David Wulfson, president of the NYOG parent Vermont Rail System, said: “We were shocked to get the letter. We absolutely didn't expect it. We feel the OBPA is overreacting to a disagreement over the interpretation of a minor issue in the contract. We are hoping we can discuss this with them and come to an agreement... There is a conflict between us and the Port and I don't want the customers to be brought into it. We want to continue serving the community.”

The locomotive

Wulfson said the contract requires NYOG to maintain the 1950s locomotive, which NYOG has not operated for two years. “We maintain those engines for them, but it's come to a time where we recommend they do a major rehab on the locomotive or purchase a new one... We sent one of our engines there at no cost to the port” to use instead. {Jimmy Lawton of Johnson Newspapers in Watertown *Daily Times* 24.June.11}

The chronology

2002. NYOG begins to operate the line between Norwood and Ogdensburg for the OBPA [see 02#04A].

2008. NYOG agrees with American Rock Salt to move product from Retsof, New York, to the Port of Ogdensburg. The salt cars, 500-1000 per year, will add to NYOG's 2007 car total of 500. [08#08B]

2010. American Rock Salt moves the salt transload to Norwood, using the same operator as at the port, Knowlton and Sons. [10#12A]

January 2011. The OBPA ended Knowlton's role as hauler for the OBPA via a 4 January 2011 letter. The authority wrote him that it would perform hauling services 'in-house,' and would rent 'its own vehicles and utiliz[e] Authority labor.'

From there things continued to go down hill, eventually leading to the current dispute, according to Knowlton.

Offered his facility to OBPA

He later offered to lease or sell the facility to the OBPA, but the authority was not interested. [See below.]

May 2011. OBPA 'discovers' that NYOG has used parts from one of the two OBPA locomotives given to NYOG in 2002.

9 May 2011. OBPA sends a notice of default to NYOG. OBPA Executive Director Wade A. Davis said the authority's No. 12 SW-9 locomotive was not properly maintained by NYOG, as required by contract. The notice grants the company 30 days to take corrective action and comply with the contract.

Davis later said the 1950s-era train engine was "cannibalized" for parts in order to maintain the No. 14 SW900 locomotive, also owned by the authority. He said that action places the company in default of an agreement, which requires the rail company to maintain both locomotives.

June 2011. David Wulfson, president of the Vermont Rail System, says regular maintenance was performed on locomotive No. 12, but its disrepair resulted from regular wear and tear, which the agreement takes into account. Parts were taken off of the No. 12 unit, which has been off-line for nearly two years, and used on the No. 14 unit. However, after receiving the notice from the OBPA, Mr. Wulfson said all of those parts were ordered and replaced.

“In the railroad business, the customers come first. If you have two engines sitting side by side and one needs a fuel pump, it's normal procedure for any railroad to borrow from a unit that is off-line and use them on another. But any parts we have borrowed have been replaced.”

Wulfson says the No. 12 unit remains out of service due to a generator failure that resulted from regular wear and tear, for which he says his company is not responsible.

A 6 June letter to VRS from Pat Stapleton of Rail Mechanical Services Incorporated, Schuylkill Haven, Pennsylvania, states: 'My inspection of unit No. 12 indicated that it has been properly maintained and this electrical failure was an unavoidable result of age and normal wear and tear.'

Wulfson estimates the generator replacement at between \$20,000 and \$50,000. "In my opinion and outside experts' opinion, no matter who replaces the generator, it's still throwing good money after bad. You still have a 1950s machine that is outdated and it will continue to have problems down the road."

21 June 2011. OBPA sends a notice of termination. Davis later says: "The notice of default demanded the railroad correct the problem. They did not do so, therefore the notice of termination was sent by the authority to protect the public interest...."

"General maintenance prevents major maintenance, and as a result of general maintenance not being performed, locomotive unit 12 is permanently out of service by the railroad's admission."

22 June 2011. VRS counsel Eric Benson writes OBPA Attorney Justin Miller: 'The NY&ORC does not agree that waste was committed. Regardless, we cured every issue identified by you as a default with the sole exception of the generator in the Number 12.'

22 June 2011. OBPA advertises in *Railway Age* for a manager. 'The Rail Transportation Manager will manage, plan, direct and monitor the safe and efficient operations of the Authority's rail system and services through the administration of operating agreements between the Authority and the operating contractors.' {magazine website}

Later, Frederick J. Carter Sr., president of the OBPA board of directors, said: "Right now, we feel that we are going to be in need for someone to run the railroad. We want to make sure that we are in a position to operate it when the time comes."

A transportation manager "probably wouldn't" be hired if the rail operator retains control of the line, but said the authority plans to follow through on the contract termination. "The railroad has been run before by the Bridge and Port Authority. If we have to get back into that business to protect our customers and our interests, then we will do it," says Carter.

The new hire would be in charge of sales, expansion and supervision of the railroad, as well as negotiating agreements with contractors. "The railroad is a very important to the port, to our system and to our transportation. This person would basically oversee it all."

While he would not provide details, Carter said the authority has received some interest in the position. {Jimmy Lawton of Johnson Newspapers in Watertown *Daily Times* 24 & 30 June, 1 July.11}

STB involvement

Merely because the contract is terminated does not mean that NYOG is relieved of its obligation to serve customers on the line. When ST terminated the contract with NEGS, the latter fought the termination of its operating rights at the STB. See 10#05A.

What is behind the OBPA action?

Comments from 'UB' and 'BigT' appended to the Lawton stories in the *Daily Times* said:

- 'I'm not sure if this is really why OBPA is doing this. A Mr. Knowlton has built a road salt facility in Norwood which is served by the Vermont Rail line. I believe that his business is hurting the OBPA's salt contracts at their Ogdensburg port. If OBPA takes over this RR line, they will put the squeeze on Mr. Knowlton's business.'

- '[NYOG] makes about three trips per week to Knowlton's (less than one mile from Norwood) and maybe one or two/ week to Ogdensburg (over a 30-mile trip with no stops in between). OBPA can not support or compete with Knowlton's business.

'This suit is not about maintenance..it is about Mr. Davis justifying his State job and his retirement package along with all of his "caboozes".'

- '[I]f the plan goes through, what will the new railroad manager have to work with. If I am correct, he will have two old worn-out locomotives, one of which is not operable. Will the OBPA then do what they should have done a long time ago...buy two new/newer locomotives? Or, as in the past, will they saddle the new guy with junk that should have been scrapped?' {Watertown *Daily Times*}

VRS: A MEETING WITH OBPA

6 July, Ogdensburg. **THE TWO PARTIES MET AT THE OBPA OFFICES** without a result, though both said they expected to resolve the matter. OBPA Executive Director Wade A. Davis offered no details. "We took a positive step forward today. There were productive legal discussions and both parties want to work toward a resolution. But several areas of concern remain."

VRS President David Wulfson and Jerry Hebda, former VRS vice-president and now a consultant to the company, met with Davis and other OBPA officials. They also declined to comment. {Jimmy Lawton of Johnson Newspapers in Watertown *Daily Times* 7. July.11}

7 July, Norwood..**THE 2010 SALT CHANGE IS CAUSING THE RIFT**, said Mike Knowlton [See chronology above.] "In my mind, there is no question that my request for rail service for salt caused problems between the New York and Ogdensburg Rail Company and the OBPA."

Authority position wrong

"This issue with the railroad is not related to Mr. Knowlton's operations. This issue is a contractual dispute between the New York and Ogdensburg Rail Company and the Authority. It is about a locomotive that was not properly maintained," said Davis.

However, Knowlton said the locomotive issue is being used as way for the authority to gain control over the railroad in order to regulate the rail. He said that when the authority-owned #12 locomotive was taken off-line nearly two years ago, NYOG provided a superior unit compared to what the #12 could do even if it was repaired.

"They brought in an 801 main line locomotive to ensure service would continue," he said. "Vermont (Rail Systems) has done an excellent job of running this railroad. They have resources, personnel, and experience. It makes no sense that the authority would want to get rid of them over a locomotive." {Jimmy Lawton of Johnson Newspapers in Watertown *Daily Times* 7. July.11}

CONNECTICUT

PW v HRRC: CASE ENDED*

16 June, DC. **PW WITHDREW ITS PETITION FOR WAIVER FOR ADVERSE ABANDONMENT** on the out-of-service section of the Maybrook Line, which it filed in September 2010 [see 10#09B].

PW, working with ConnDOT's Metro-North passenger service, 'has been able to provide service to the involved shipper [Tilcon in Danbury—*editor*] during certain windows that the CDOT has made available. Consequently, while P&W still prefers to able to use the more direct HRRC routing to serve this customer using its trackage rights, it is not necessary at the present time to use the Board's resources to ensure that P&W will be able to continue providing service to the

shipper.

‘As the Board has not yet acted on P&W’s Petition for Waiver, and as P&W does not at this time intend to file an adverse abandonment application, no parties will be prejudiced by the withdrawal of that petition.’

24 June, DC. **THE STB GRANTED PW’S MOTION TO WITHDRAW** its petition for a waiver. {STB website, decisions page, Docket Number AB 254 Sub No.10}

PW: THE WILLI

8 July, Hartford. **THE STATE BOND COMMISSION APPROVED \$1 MILLION FOR BETTER CROSSING PROTECTION** on the PW line between Willimantic and Plainfield due to increased rail traffic. Kevin Nursick, ConnDOT spokesperson, said Route 203 in Willimantic will receive gates, and Cemetery Road in Plainfield will receive flashing lights and gates. The improvements are scheduled for August. {Emily Groves in Norwich *Bulletin* 8.July.11 }

MAINE

LEGISLATURE: RAIL MONEY*

1 July, Augusta. **LEGISLATORS VOTED TO ALLOCATE THE REMAINING 50% OF SALES TAX** collected on rental car fees to the STAR Account [State Transportation, Aviation and Rail (STAR) fund (Title 23 Section 4210-B)]. Beginning in FY 12 (1 July 2011)-13, all sales tax on car rentals (estimated at \$6.2 million), not just 50%, will go to STAR, so STAR will receive a \$3.1 million increase.

That funding will ensure that Maine meets its match for federal transit and aviation funding. About \$1 million of the new monies will go to the Small Harbor Improvement Program (SHIP); another \$1 million will go to the Industrial Rail Access Program (IRAP); \$930,000 will be used for transit investments; and \$930,000 will go to Maine’s regional airports.

The Legislature [in possibly the most short-sighted move in MDOT history—*editor*] cut \$230 million from the capital projects fund, eliminated indexing of the gasoline tax, and declined to pass any transportation bonds to the voters. {Maria Fuentes in Maine Better Transportation Association *Update* 1.July.11 }

[MDOT’s two-year plan envisioned an additional \$1 million in IRAP funds. See 11#04A.]

MMA/NMR: JOINT PRODUCTION

9 July, Northern Maine Junction. **MNR AND MMA HAVE AGREED TO SHARE HAULAGE TRAINS**, wrote MMA Chair Ed Burkhardt. ‘MMA has agreed to handle MNR’s traffic between Fort Kent and Madawaska with our Madawaska-based crew, and in exchange MNR is handling MMA’s traffic between Fort Kent and Millinocket in its trains.

This is a sensible move to save us both from operating duplicative services in territory where there isn’t nearly enough traffic to sustain a single carrier.’

[MNR has overhead trackage rights over MMA at both ends, while MMA has overhead trackage rights between Madawaska and Millinocket. See 11#05A.]

Pricing

‘MNR has not given us any changes in their revenue requirements, so we continue to protect existing pricing and are settling between ourselves on a mileage prorate basis, which is what we had proposed. I hope they will leave this as is.’

Millinocket to Brownville Junction

‘We have had some discussion about one or the other of us handling the business of both [between Brownville Junction and Millinocket], or perhaps alternating in doing so, with no conclusion as of [9 July]. The MNR - MMA interchange is

at Millinocket, and this accounts for most of the MNR's business. Additionally, there is some miscellaneous business in the Millinocket area (including log loading at Dolby) that requires service.

'You will recall these trackage rights arrangements were inflicted on MMA by the State as part of the line sale. They are highly uneconomic, [and] provide duplicative service in territories where there isn't sufficient traffic to support even one rail carrier. But this situation will sort itself out over time, given that the laws of economics haven't been repealed.' {e-mails to ANR&P}

The MMA schedule

Job 1 leaves Brownville for Megantic early AM three days a week. Job 2 arrives Brownville early AM three days a week.

The NMR schedule

[NMR planned to base crews in Oakfield and Squa Pan—see 11#05B.] Six train service workers are assigned to NMR who work four days a week, assigned.

NMR Oakfield. Train 901 runs Tuesday, Thursday, and Saturday at least to Millinocket, and perhaps to Brownville Junction. Also, a train runs to Houlton Tuesday and Thursday.

NMR Squa Pan. This crew operates Monday, Wednesday, and Friday. They may operate to Oakfield, to Madawaska, to Presque Isle, to Easton, or to Caribou.

The EMRY schedule

NBSR operates a train to Mattawankeag (interchange with ST) and Brownville Junction (interchange with MMA and NMR) three days a week, with a US crew which starts their trip in McAdam. On 7 July, the eastbound NBSR, two locomotives and a slug, picked up a long string of cars off of Pan Am's main line, most from the 6 July WASJ [Waterville-Saint John joint train]. NBSR and ST track workers were evident on their respective lines. {Rail observer Billy Leazer in NERAIL 8.July.11}

MMA: ANOTHER SAVIOUR?*

6 July, East Millinocket. **LOCAL BUSINESS OWNER GALEN HALE PROPOSED TO BUY THE SHUTTERED KATAHDIN PAPER MILLS** in Millinocket and East Millinocket. [The mills were once MMA's largest source of traffic. See 11#04A.]

Hale, who formerly worked as a papermaker at each mill, now owns East Mill Metal and Salvage LLC in East Millinocket (a scrap metal recovery operation), and retail store Nicatou Stoves, which sells stoves and alternative fuels. He is seeking startup capital.

Looming disassembly

Hong Kong-based International Grand Investors Corporation, which recently bought the former Domtar mill in Baileyville, is in talks to buy the mills for \$1, though local leaders say negotiations have hit complications. If no buyer is found before 31 July, Brookfield plans to begin disassembling the mills' equipment. {Nick Sambides in *Bangor Daily News* 6.July.11}

A lack of wood the problem ?

On 23 June, State Representative Herbert Clark, D-Millinocket, told the Millinocket Town Council that International Grand Investors wasn't finding enough wood in the area to make the purchase agreeable.

But on 24 June, Keith Van Scotter, co-owner of Lincoln Paper & Tissue LLC, said: "The wood is there. It is obvious that there are plenty of allowable cuts available. The issue is the cost. Wood prices continue to move up in an environment where our product prices are not."

John Williams, president of the Maine Pulp & Paper Association, said: “The supply in Maine has been increasingly tight in hardwoods and softwoods. It means there is wood out there but there is less wood readily available. It is really not a lack of wood. That is particularly true in softwoods. The problem is getting softwoods to markets. There are not as many loggers as there used to be and we have very high fuel prices.”

Softwoods would most likely be the primary resource of the Katahdin mills, Van Scotter said. Wood prices, have generally increased by 50% since he and business partner John Wissman revitalized the Lincoln paper mill in 2004. Maine also had a longer, snowier winter and an extended rainy spring and mud season this year, though Van Scotter dismisses those factors as “more of an excuse than a reason” for any recent price spikes.

Landowners are driving up wood bidding prices, and “the consequence is that it squeezes their customer.” Landowners might drop their prices to help re-establish two paper mills. Letting the deal die is “a bad strategy,” Van Scotter concluded. {Nick Sambides in *Bangor Daily News* 24.June.11}

MASSACHUSETTS

CSXT: TRANSFLO*

28 June, Westborough. **CSXT OFFICIALS ATTENDED A PUBLIC HEARING ABOUT THE NEW TRANSFLO TERMINAL HERE.** CSXT subsidiary Transflo Terminal Services will move its bulk transfer facility now in Allston here by 2012 [see 10#11A]. CSXT has set up a website, www.railwestborough.com, to explain the project to the public. The company needs to meet again with the Board of Selectmen and other boards before it can receive final site plan approval. {Priyanka Dayal in *Worcester Telegram and Gazette* 29.June.11}

GU: A CLEAN BILL OF HEALTH*

15 June, Upton. **THE YARD IN WEST UPTON RECEIVED A CLEAN BILL OF HEALTH** from the Massachusetts Department of Environmental Protection (DEP). Four DEP officials were among 14 people who visited the GU railyard on Maple Avenue on 11 May after a local resident complained that tanker cars containing alcohol, nitric acid, ethanol, and toluene were being stored there. {Julie Balise in *Milford Daily News* 12.May.11}

DEP report: wood pellets

‘The site visit included looking at their fairly new wood pellet bagging operation and the transloading area,’ wrote DEP waste prevention chief John F. Kronopolus in a June 15 memorandum. “Wood pellets are brought in by railcar and vacuumed into large silos. The pellets are then bagged. Any dust is collected, made into pellets, and bagged. This operation is being conducted by Grafton Upton Railcare who is contracted by the railroad to operate the facility. I informed the group that if greater than one ton of particulate matter is emitted to the ambient air, the operation could require an AQ Limited Plan Approval. Based on the description of the operation, it appeared that a permit is not needed at this time.’

Liquid transload

‘The transloading operation is also operated by Grafton Upton Railcare as a contracted operation for the railroad. Hazardous and non-hazardous liquids are pumped from rail cars to truck trailers. The pumping system is set up to minimize the potential for any spillage (liquid is pumped from the top of the rail car to the bottom of the trailers) and is designed to collect any vapors and return them to the rail car.

‘Future plans, already in construction, are for a more extensive system to collect and manage any potential spills. The railroad is in the process of sloping their new transloading area so that any/all potential spills can be managed in a retention basin. No violations of Massachusetts Hazardous Waste Regulations were observed.’

Kronopolus concluded that, ‘Railroad officials have taken protective measures in areas of potential environmental

concerns.’ {text of Kronopolus memo}

Grafton Upton Railcare

Doug Pizzi, a public relations consultant who accompanied GU owner Jon Delli Priscoli and GU official Eric Moffett on the 11 May inspection visit, said that Grafton Upton Railcare is “an affiliate of the Dana Companies that operates the transloading yard and pellet bagging under contract to the railroad.”

Pizzi said the DEP memo indicates that GU passed the inspection with flying colors, “doing things they are not even required to do, and there will be fencing to come.” {Discussion with *ANR&P*’s Ed Beem, 22.June.11}

FRA satisfied, too

In April, the Federal Rail Administration also sent officials to the West Upton Yard. According to FRA spokesperson Warren Flatau, ‘FRA Region 1 conducted several inspections at the Grafton and Upton yard and found them to be in compliance with our regulations. My understanding is that the railroad leases a parcel of land adjacent to the yard to DANA Transportation Inc. which operates the intermodal transload facility. The confusion seems to be that some have sought erroneously to apply the “48 rule” requirements for hazmat to tank cars already at their destination (the Dana facility).’¹ {e-mail to *ANR&P*’s Ed Beem 15.June.11}

Delli Priscoli on critic

Both the FRA and DEP inspections came at the request of Marsha Paul, a former Upton selectwoman who ran unsuccessfully for the local board of health this spring. In a 14 May letter to the editor of the *Milford Daily News*, GU owner Jon Delli Priscoli responded to Paul’s concerns by charging that, ‘The May 11 visit to the West Upton transloading yard by the state Department of Environmental Protection came at the behest of a failed Upton candidate for local office who thought the best way to win votes was to manufacture problems where none exist.’

Delli Priscoli went on to call Paul’s complaint “shameful, politically motivated hysteria generated by an unscrupulous candidate, who happens to be an abutter to the railroad.” {*Milford Daily News*}

“Nobody has a problem with the train coming in as long as it’s safe,” said Marsha Paul. {*ANR&P* discussion 15.June.11}

GU: AN UPDATE**

20 June, Upton. ***IT’S OPERATIONAL FROM NORTH GRAFTON TO WEST UPTON. IT’S A THREE-PHASE PLAN,***” said spokesperson Doug Pizzi, of the 16.5 miles of track between North Grafton and Milford. Only about half the line is operational.

¹The Association of American Railroads in January 2011 produced an exegesis of US regulations on hazardous material rail car shipments (hazmat). Section 3 reads:

3.Expediting Hazardous Material Shipments

Loaded hazardous material shipments and both loaded and residue/empty time-sensitive shipments (see Table 2) must be forwarded either:

a. within 48 hours (excluding Saturdays, Sundays, and holidays) after accepting them at the shipper’s facility or receiving them in any yard, intermediate (transfer) station, or interchange point

or

b. when only bi-weekly or weekly service is performed, on the first available train toward the destination.

Exception: The 48-hour requirement does not apply to shipments that are constructively placed or set out for repairs. [The arrival of the cars in the yard means the cars are ‘constructively placed’. Editor]

{United States Hazardous Materials Instructions for Rail, boe.aar.com }

Phase two is West Upton to Hopedale. Phase three is Hopedale to Milford. Hopedale to Milford is problematic, because many of the rail crossings have been removed. "They have to be replaced because the railroad was never abandoned....It is incumbent on the removers, not the railroad, to restore these crossings. The issue of funding is a question for those who removed the crossings." {ANR&P discussion 20.June.11}

Resurrecting the GU

Jon Delli Priscoli, whose principal business is First Colony Development in Marlborough, Massachusetts, purchased the GU in 2008. As reported in July 2009 [09#07A], Delli Priscoli initially planned to invest as much as \$8 million to construct a dry bulk handling facility, a food-grade operation, a kosher truck wash, and facility capable of handling regulated commodities. Pizzi declined to discuss the status of the proposed kosher car wash, food grade operation, or regulated commodities facility.

"We are reluctant to talk about future plans," he said. "That only helps our competitors."

Wood pellets, corn

Pizzi did, however, report that the wood pellet bagging operation at the West Upton yard started up for the first time on 21 June. "It missed the last heating season," said Pizzi. "It took its first delivery yesterday." Pizzi also confirmed that the Weetabix cereal factory in Clinton receives corn at GU's North Grafton facility.

Though the GU only operates two days a week at this point, Pizzi said, "The railroad is progressing in a non-robust economy." [ANR&P discussion 20.June.11]

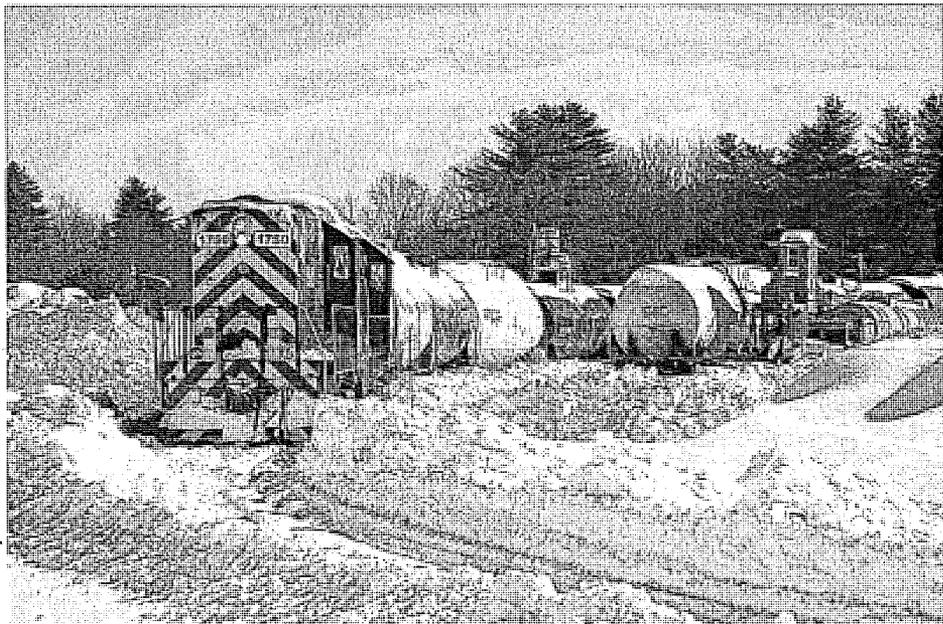
[See liquid bulk transload in other story.]

Railroad real estate development

Primarily a real estate developer, Jon Delli Priscoli has bought land along the GU line from the interchange with the CSX mainline in North Grafton to the interchange with the CSX Franklin Branch in Milford.

According to the GU website, its New England Integrated Logistics Center 'provides multimodal transportation services combined with industry-leading 3PL options, including real estate development and construction.'

The GU website advertises bulk products transload, food grade crossdock and a five-acre build-to-suit site in North Grafton; a five-acre site in Grafton; envirobulk transload, liquid products transload, building products reload, a 10,000SF building, and a 38-acre build-to-suit site in West Upton; a pair of build-to-suit sites, one 173 acres, one 73 acres, outside of Hopedale; a bulk products transload,



West Upton. Tank cars in the yard February 2011. {Courtesy Dan Wenc}

warehouse/crossdock, 85,000SF building, and 30-acre build-to-suit site in Hopedale; and a five-acre build-to-serve site in Milford. {www.graftonuptonrr.com}

According to Doug Pizzi, Delli Priscoli owns the 85,000SF former Wickes Lumber building in Hopedale, a steel structure with 50-foot ceilings and an inside rail spur. Next to it, though not owned by Delli Priscoli, lies the one-million square foot Draper Mill complex, empty since 1980.

"The line is ripe for rail-oriented development," said Pizzi. "It can offer one-stop shopping to rail customers." {ANR&P discussion 20.June.11}

New GU engine?

Pizzi declined to comment on the railroad's engines and rolling stock. "If we confirm we've bought a new engine, it invites trespass," he explained. "People are passionate about railroads. That's all well and good, but it sometimes leads people to do things they shouldn't do."

Edaville RR in limbo

Prior to purchasing the GU, Jon Delli Priscoli purchased the narrow-gauge Edaville Railroad in South Carver, Massachusetts. Pizzi confirmed that Delli Priscoli has had the two-mile line up for sale for \$10 million since late 2010. "He wants to sell it as a complete entity to someone who wants to operate it as the scenic tourist railroad it is. A deal was in the works, but it didn't pan out. Now two other buyers are back in the mix. We hope to have something in a couple of months." [ANR&P discussion 20.June.11]

PAN AM: CONNRIVER

1 July, DC. **US DOT AND THE MASSACHUSETTS DELEGATION ANNOUNCED A \$72.8 MILLION AGREEMENT** to upgrade the PAS line from Springfield to East Northfield, in order to permit Amtrak to again operate the *Vermont* over it. This cuts 11 miles and 20 minutes from the route. {Massachusetts delegation press release 1.July.11}

The money from USDOT consists of \$70 million announced in January 2010 [see 10#01B], a \$2.8 million increase in the award in December of 2010 (FRA redirected funds from Wisconsin and Ohio which rejected federal high-speed rail funds), and another match of \$2.8 million.

Finally, two contracts

MassDOT spokesperson Joe Pesaturo provided additional details on 7 July:

A MassDOT team negotiated a construction agreement to build the project, which has a 2 1/2-year term; and a maintenance and service-outcome agreement with a 20-year term. Amtrak, PAS, and the state [unclear if MBTA or MassDOT] signed the construction agreement on 27 June and [Amtrak and PAS, apparently, signed] the maintenance and service-outcome agreement on 29 June.

[In a March interview with Northampton Media, Pioneer Valley Planning Commission (PVPC) Executive Director Timothy Brennan worried that Congressional Republicans would delete the \$73 million while the contract negotiations dragged on.

"This has been going on for a while and we're all sweating bullets over it. Because until that agreement is inked, that money will not be released. (and) the longer this goes on, the more concerned we are." {David Reid in Northampton Media 3.July.11}

The condition of the track

In 2009 MassDOT issued a draft Environmental Assessment for the work, based on a 2009 HDR report completed for PVPC [see 09#09B]. That year, MassDOT applied for \$68.9 million from the FRA.

The HDR report stated: "The line from East Northfield to Greenfield and Springfield has numerous temporary speed

restrictions of 10 MPH. Most of the speed restrictions are allowed to remain in effect for extended periods, reflecting the limited amount of traffic currently operating on the line.’ {page 2-4}

The work

The construction agreement calls for the railroad to use its own workforce to bring the line to FRA Class 4 condition in two years. {Massachusetts delegation press release 1.July.11} ‘The project will be designed and constructed to maintain the freight service on the line’, wrote Pesaturo. He declined to state how many turnouts will remain for Pan Am customers.

All project materials will be procured by MassDOT through the MBTA. Initial procurements are expected by the end of the year.

Service and new stations

When Amtrak begins service, its trains will stop in Springfield (Union Station), Northampton, and Deerfield in Massachusetts, and then the current stops in Vermont. The parties are considering a stop in Holyoke. {Massachusetts delegation press release 1.July.11}

The 2009 HDR report stated: ‘The current alignment covers 60.4 miles between East Northfield and Springfield, with a stop in Amherst. Under the new alignment, the trip length would be reduced to 49 miles. The stop in Amherst would be eliminated, and replaced with a stop in Northampton with a continuation of bus service from Amherst to Northampton. A station would also be added at the Greenfield Intermodal Facility with the expectation that another station would be developed in Holyoke.’ {page 5-1}

According to Pesaturo, ‘while a number of planning studies have considered adding more service to the Knowledge Corridor, this project is focused on returning the *Vermont* to the line.’ {e-mail to ANR&P 7.July.11}

Help for freight

The vastly faster track will permit better service to the current ST customers, the largest of which is the FirstLight coal-fired power plant at Mt. Tom, as well as those served via the new interchange with PVRP [see 11#06A].

The 2009 HDR report stated: ‘With the betterment of the rail line, freight service will also benefit through improved speeds along the line, and thus be better suited to serve shippers. The improvements to the rail line are anticipated to create benefits by diverting some freight movement from highway to rail, which will lead to a reduction in shipper costs.

‘...The total cumulative value of the shipper cost savings is \$69.2 million. Additionally, the diversion of trucks to rail will reduce congestion on the regional roadway network and improve safety on the road for highway users....Due to the relatively slow transition from truck to rail shipments, as well as the timing of the additional freight service, the early benefits to shippers are relatively small, and increase over time. It is not expected that the additional service in the longer-term will have any impact on the planned freight improvements.’ {page 5-17}

The 2009 Environment Assessment stated: ‘Projections for completion of the Project indicate that there will be one additional freight train operating on the PAS Connecticut River Line and that by 2030, freight traffic will increase by 50 to 100%.

‘Freight train speed will increase from 10 mph to 40 mph. Amtrak trains will travel at about 60 mph. Freight travel times may change slightly to allow for Amtrak travel on the Connecticut River line, but this would not negatively affect overall freight service. The increase in average speed and number of cars per train coupled with track improvements would result in efficient freight operations.’ {text page 27}

PAS: MORE AUTO SPACES**

28 June, Ayer. **THE TOWN AND THE RAILROAD SPARRED OVER WATER FILTRATION** as PAS continued its plans to expand the San-Vel auto facility. Phase 1, with space for 800 cars, was completed in 2009 [see 09#12B], and PAS showed plans for the expansion, adding 1200 spaces, to the Town earlier this year [see 11#03B].

On this day, at the request of the Board of Selectmen, PAR Executive Vice-president Cynthia Scarano and Ayer

Department of Public Works Superintendent Dan Nason appeared for an update. Nason wanted the same StormCeptor filtration devices as Phase 1 used, for the sake of uniform construction, maintenance and crisis-management protocols for the entire facility. Scarano, citing the cost of the brand-name device, said a less expensive device specified in the Phase 2 plan suffices.

Because of federal pre-emption, Ayer cannot regulate the facility. Under a 2003 settlement, the town may monitor the construction and the ongoing drainage of the facility. Massachusetts DEP and the EPA signed off on the StormCeptor devices for Phase 1, but do not require them for Phase 2.

"If there was a reason that it made an environmental difference, then I would approve it," Scarano said. "To be honest," she added, "we pay a lot of money for these outside engineers who advise us. You have to look at the whole system. What they're telling me is, there isn't a difference."

Nason said Scarano's data might be appropriate for another site, but not for this site, which lies above the town's drinking water aquifer. {Mary Arata in Lowell Sun 2.July.11}

STB? Work has begun

Nason said on 6 July that selectmen, the town administrator, and the office of US Representative Nikki Tsongas were arranging a meeting with officials from the STB.

While the town and PAS have not agreed on the filtration device, the railroad has begun work on the expansion. {ANR&P discussion}

EPA and DEP okay with PAS device

At a 14 June Selectmen's meeting, Nason said neither Carl Dierker, director of the Office of Regional Counsel for U.S. EPA Region 1 in Boston, nor the regional director for MassDEP's Central Regional Office in Worcester, agreed with him. "They more or less are saying the water quality specs have been met."

"They were resisting the type of protections you wanted before," noted Selectman Pauline Conley, who said involvement by a congressman's office and federal officials "compelled" the Stormceptors for the 800-car lot. "If they did it for the 800-car lot, no reason not to do it for a 1200-car lot."

"There's already talk of Phase 3," noted Nason.

"They're also on criminal probation," added McCreary of the March 2009 criminal conviction handed Pan Am in relation to the failure to report a 2006 locomotive diesel fuel spill in Ayer and taking measure to cover up the spill [see 09#04A]. {Mary Arata in nashobapublishing.com}

More tax revenue

The additional paving, fencing, and lighting will increase the assessment of the San-Vel facility, and thus taxes to the Town of Ayer, said the town's assessing administrator Tom Hogan. He estimated the increase in valuation for the first [2009] phase at about two million dollars. {ANR&P discussion 6.July.11}

Why the expansion?

Nason said he had not heard any reasoning from PAS for the expansion. Mike Miranda, whose NORAD operates the Davisville, Rhode Island facility receiving Fords, said he had "another year and a half" to go on the Ford contract there. {ANR&P discussion 5.July.11}

Ford declined to comment on the reasons. Spokesperson Todd Nissen wrote: 'For competitive reasons we don't talk publicly about the specifics of our discussions with suppliers, so I can't comment on what Pan Am Southern Railway is planning for the Ayer facility.'

'We don't give out sales forecasts, but I can tell you that Ford sales were running 12% ahead of last year through the first half of 2011, approximately in line with the overall industry increase.' [But global auto manufacturers are reporting manufacturing plans through 2016 far in excess of the global market. Some of them will fall short. {Antony Currie and

Robert Cyran in *New York Times* 11 July 11

Nissen also declined to comment on whether Ford would use the Mechanicville facility [see 11#06A] when it opened. {c-mail to ANR&P 8 Jul 2011}

NEW HAMPSHIRE

MBRX v ST: THREE ORDERS*

23 June, Concord. **JUDGE BARBADORO ORDERED A HEARING FOR 1 JULY**, after an earlier meeting with counsel for both sides. The text of the order [see 11#06A]:

‘Before this case can be tried, the court must interpret the Tracking Rights Agreement (“TRA”) and the safety rules that are at issue in the case. The court will hold a hearing on July 1, 2011 at 2:00 p.m. where the parties may present their respective views on the contract interpretation issues that lie at the heart of the case. To the extent a party contends that a provision of the TRA is ambiguous, that party shall be prepared to present any evidence that bears on the claimed ambiguity.’

Order denying ST contention of STB jurisdiction

ST sought dismissal of the case because under the Interstate Commerce Termination Act, federal law pre-empts state law. Barbadaro denied this motion.

‘The ICCTA in part states that the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.’

ST’s reasoning, Barbadaro wrote, ‘begins with the premise that state law claims for breach of contract and breach of the duty of good faith and fair dealing are “remedies” as that term is used in [Title 49] § 10501. It then argues that trackage rights agreements amount to the regulation of rail transportation because such agreements ordinarily are subject to approval by the Surface Transportation Board and the Board’s authority with respect to such approval is “exclusive.”’

‘I am unpersuaded by Pan Am’s argument. The STB plainly has exclusive authority to either approve trackage rights agreements or to exempt such agreements from the approval requirement.

‘Moreover, a rail carrier that enters into a trackage rights agreement is exempt from state law to the extent that an exemption is “necessary to let that rail carrier . . . carry out the transaction, hold, maintain, and operate property, and exercise control of franchises acquired through the transaction.” 49 U.S.C. § 11321(a).

‘The ICCTA, however, does not give the STB the power to resolve disputes between rail carriers concerning the meaning and operation of trackage rights agreements. Nor does the fact that such agreements are subject to Board approval unless exempted transform privately agreed-upon terms in a trackage rights agreement into the “regulation of rail transportation.” Thus, I am not persuaded that contract claims arising from a trackage rights agreements are preempted for the reasons claimed by Pan Am.

‘The present dispute concerns Pan Am’s right to bar Leishman from its tracks pursuant to the TRA. Because the dispute is not a dispute with respect to the regulation of rail transportation, Pan Am’s motion to dismiss on this basis is denied.’

Order dismissing Leishman as a plaintiff

Barbadaro granted ST’s motion to dismiss Leishman, leaving MBRX as the plaintiff. Barbadaro noted that the MBRX complaint failed to state any damage to Leishman personally (as opposed to his corporation which owns the railroad), and without any damage, Leishman has no case. {all three orders on court website, Case 1:10-cv-00264-PB}

MBRX v ST: POSSIBLE DEAL**

1 July, Concord. **JUDGE BARBADORO TOLD BOTH SIDES THEY WERE WRONG**, during a hearing on the application of FRA safety rules to the treatment of the 2009 MBRX accident when the train hit a tractor-trailer illegally crossing the tracks.

Leishman was wrong in his application of the FRA rule to train operation in that situation, and ST is wrong in barring Leishman for life because of the rules violation, Barbadoro told the parties. {e-mail to ANR&P from Leishman}

Next formal step

According to the court website, the 'special hearing' was held 'to interpret the terms of the contract. Defendant to file motion for summary judgment; plaintiff's objection due 9/15/11. No need for reply, if counsel feel one is needed then file a motion requesting leave to file. Trial to be set for 11/1/11. (Pltfs Atty: Craig Donais) (Defts Atty: Michael Connolly)' {NH federal district court case 10-cv-64}

SOME UNSOLICITED ADVICE

On 7 July, the STB announced it will charge \$350 to file complaints against railroad rates instead of \$20,600. "We said when asked back then and we still maintain today that the amount of a filing fee should not be the reason a party does not have recourse to the STB," said Patricia Reilly of the American Association of Railroads. {*Wall Street Journal*}

Granite State Concrete should file a case for \$350 against both MBRX and Pan Am for service, if the two cannot settle the matter based on Judge Barbadoro's opinions. *Editor*

RHODE ISLAND

[See *Regional* on limestone move.]

VERMONT**VERMONT: ROAD SALT***

23 June, Montpelier. **VAOT EXTENDED THE SALT CONTRACTS FOR ALL SUPPLIERS** for another year, with a 2% price increase. {ANR&P discussion with agency's purchasing agent Brian Berini} [See 10#06B.]

QUEBEC/MARITIMES**CN: TESTING LONGER TRAINS***

26 May, Montreal-Moncton. **CN TESTED THE USE OF LONGER TRAINS INTO THE MARITIMES** this day. Spokesperson Mark Hallman said CN ran from Montreal to Moncton with a train of 13,378 feet. "We are constantly examining ways to improve our productivity and looking at how we would be able to do things if there was sufficient growth to demand that (longer train)."

Distributed power

The test train operated with distributed power: locomotives dispersed throughout the train, some at the head, some in the

middle and at the end. 'That allows for faster air through the air brakes, improves train handling and helps to slow the train more quickly....With distributed power we are able to pump air throughout system better (in cold weather) and we are not forced in cold weather to reduce train lengths. So it is more efficient.'

Longer trains not needed now to Maritimes

'The test train was very successful but existing traffic demand is such that CN can run everything on 11,500 foot daily trains. Our eastbound intermodal train at 11,500 feet out of Toronto usually drops about 3,000 feet of traffic at Moncton and proceeds to Halifax with roughly 8,500 to 9,000 feet of traffic. The same happens in reverse,' Hallman said in an email.

'If we see the need for more capacity into and out of the Maritimes in the future, CN can use longer trains such as the test train to accommodate more traffic. Because CN's sidings are 11,500 feet in length between Montreal and Moncton, if we run a 14,000 foot train in one direction, the opposing trains must be limited to 11,500 feet. This is not an issue.' CN operates 14,000 foot trains regularly between Toronto and Edmonton.

Regular schedule

Hallman said CN runs trains 120 eastbound and 121 westbound to and from Halifax from Brampton Intermodal Terminal seven days a week. The train is pure intermodal coming into Moncton but picks up a number of merchandise cars in Moncton that are destined for Halifax. The train departs Moncton for Halifax as 95% intermodal. The reverse sees westbound train 121 at 95% intermodal departing Halifax and dropping merchandise cars in Moncton. It departs Moncton as a pure intermodal train. {Hallman in email to ANR&P's Tom Peters 1.June.11}

CANSO: STILL HOPEFUL

8 July, Stellarton. **THE MAHER MELFORD TERMINAL PROJECT CAN TRANSFORM NORTHERN NOVA SCOTIA**, members of the development team told the Pictou County Chamber of Commerce, while providing a project update.

"(It could) plant a new tree of life, if you will, industrial and economic life," said Brad Gordon, director of corporate investments for Deutsche Bank, the parent company of Maher Terminals.

The group continues to work on raising equity and debt capital. Officials say the equity side of things is well on its way, with a construction date hoped to be in the near future. Phase 1 construction should take 24 to 30 months.

No public funding

Paul Martin, president of Melford International Terminal Inc., said all of the funding would be covered by the private sector. While the project has received strong support at all levels of government, there is no financial contribution "nor will there be." The group did buy land at market value from the Municipality of the District of Guysborough and the province.

Not competing with Sydney or Halifax

Gordon compared the venture to Prince Rupert, where Maher began operating the container terminal when it opened in 2007. That facility's business has expanded every year.

Martin said while they are aware of what is going on in Halifax and Sydney, just as they are of what is going on at all the ports around the world, they don't see themselves as being in competition with either location. "Our competition is Norfolk, Virginia. Those are the guys who are moving the cargo."

Martin said Melford is using a specific marketing program that targets shipping lines and the companies that use them to build support and demand for the project. In some cases, he said, companies that do a lot of shipping are just as influential as the companies who carry the boxes from port to port, if not more so. "They're the people that own the cargo that's in those boxes."

Melford also wants balanced traffic, and new exports from the region, including ones from agricultural, fishing, and industrial sources.

Martin said the growth of the industry is documented and is now outstripping pre-recession levels. It is a long-term investment and that is the view they must take with such a project.

“This type of a market is a 40- or 50-year investment. It’s not something you’re going to invest in for tomorrow. . . . What you’re looking for long-term is a stable return over many, many years.” {Michael Gorman in *Halifax Herald* 7.July.11}

MONTREAL: USING HUBS*

29 June. **THE PORT OF MONTREAL IS BENEFITTING FROM MARINE HUB SYSTEMS AND BIG CONTAINER SHIPS.** The Montreal Port Authority announced at its 26 May annual meeting that the port handled 25.9 million tons of cargo in 2010, up 5.7% compared to 2009. Container cargo increased 6.8% to approximately 1.3 million TEUs due partly to a 33% increase in Mediterranean traffic.

President and Chief Executive Officer Sylvie Vachon said: “This reflects the importance of hub ports in the Mediterranean that receive cargo from Southeast Asia via the Suez Canal and that we are in business with.” {MPA release 26.May.11}

Growing segment

In late June, Tony Boemi, vice-president Growth and Development for the Authority, said: “Hub ports not only in the Mediterranean but also in the Caribbean have helped boost cargo in Montreal.”

Megavessels have too much draft and cost too much to call every port. “But they still have to get cargo to markets, so when you look at Montreal one of our biggest attributes is geographic location relative to the population density surrounding us. So what we are seeing is these larger vessels transhipping into these smaller vessels so the smaller vessels are reaching the markets.”

Cargo origin changing

“If I gave you a snapshot of Montreal say 10 or 12 years ago you would see that roughly 80% was Northern Europe cargo and maybe 15% was Western Mediterranean. If I gave you that same snapshot today (latest figures) with the transshipment hub strategy, we see that Northern Europe is roughly 46%, the Western Mediterranean is about 18.5%. We also now see cargo from Latin America which is about 6.5%, the Middle East 9%, Asia at about 13%, Africa at about 4% and Canadian cargo about 3%.” [Canadian cargo is presumably by Oceanex Montreal-Newfoundland. *Editor*]

No new carriers, but more Canada-destined

The increase in cargo and markets however hasn’t meant “new shipping lines, just the same lines increasing the number of services,” Boemi said. “What we are realizing, again making comparisons between the Port of Montreal today versus the port say 10 years ago, is we are still very predominant into the U.S. market but we are realizing that these new markets - Latin America, Eastern Mediterranean, Asia - all have cargo destined for the Canadian market whereas before the ratio between U.S. and Canada transiting through Montreal was roughly 45% U.S. and 55% Canadian. Today that is 25% U.S. and 75% Canada.

“Years ago people would say doom and gloom for Montreal because we can’t handle the big ships. I say of these big ships bring them on because you got to get the product to market and they are doing it through transshipment. So we definitely see growth.”

Not taking market share from Halifax

The MPA spokesperson doesn’t see Montreal through this hub port system stealing business from Halifax. “I really don’t think so. If I remember correctly they have always had market share for Montreal and Toronto and strong presence into the U.S. and those lines are still calling there. Our biggest competitors are on the U.S. East coast like Norfolk and New York,” Boemi said. {Discussions with *ANR&P*’s Tom Peters 24 & 29.June.11}

Halifax big ship port

Halifax Port Authority's Michele Peveril said Halifax's approach to cargo and ships is different than Montreal "in that they are looking to have the smaller ships. We are a big ship port targeting bigger ships that then would transfer to smaller ships elsewhere."

She cited the example of CMA CGM with its bigger vessels loading in Halifax and then continuing to Kingston, Jamaica to disperse cargo to smaller vessels through its hub there. Not all cargo on the CMA CGM vessels originates in Halifax but there are commodities such as potatoes, fish and other food stuffs that are exported from the Maritimes to the Caribbean. So in effect, Kingston is a hub port for Halifax because it connects Halifax cargo to various trade routes in the Caribbean.

"So Halifax has a different model with its ability to take the big ships versus Montreal which is looking at the size of vessel that can transit a river port," she said. [The largest container ship to ever call the Port of Montreal was the MSC vessel *Carouge* which carried 4,860 TEUs into Montreal on 12 May this year. {Robert Gibbens in *Montreal Gazette* 13.May.11}] The largest ship calling Halifax regularly basis is MOL's *Paramount* at 6,350 TEUs.

Halterm has no air draft problems, deep berths, and new super-post-Panamax cranes [see 11#06A] can handle any container ship afloat, according to port authority and Halterm staff. {Peveril in discussions with Tom Peters 28 & 29.June.11}

SYDNEY: HUB PORT?*

26 May. ***SYDNEY WOULD BE AN IDEAL HUB PORT FOR SOUTHEAST ASIA AND THE INDIAN SUBCONTINENT***, distributing cargo to ports along the East coast, said Ed Zimney of Paul Richardson & Associates, during the Sydney Ports Day panel discussion in May.

James Paylor, ILA vice-president in Philadelphia, told the panel that transshipment would give Philadelphia access to these bigger vessels. {ANR&P's Peters coverage 26.May.11} [Philadelphia and Sydney discussed cooperation earlier—see 10#01A.]

The Sydney dredging, planned for autumn 2011 [see 11#04B], will result in a laydown area for a container terminal. But the terminal project lost its major financial back, Galaxy SARL, a French private equity fund, over a year ago and has been looking for new investors. Galaxy SARL, like many other equity funds, was hit hard by the recession. {Tom Peters in *Canadian Sailings* 19.Jan.10}

Jim Wooder, chair of the Sydney Marine Group, did not respond to a request for comment on the status of the container terminal.

BELLEDUNE: NEWFIE LINK?

23 June. ***THE PORT AUTHORITY HAS TWO EXPRESSIONS OF INTEREST TO OPERATE A BELLEDUNE- ARGENTIA CARGO FERRY SERVICE*** from private parties, following a request for expressions of interest in April of this year. "Our plan going forward is to meet with those two parties individually and find out exactly what their interests are and how they see the service going forward. Once we do that the plan would be to put out a more formal request for proposals," said the authority's marketing director, Jenna Doucet. She would not disclose the names of the two parties.

Time line?

The port has no start date in mind. Doucet said "like any vessel service the sooner the better. But realistically we are looking at maybe next spring or summer. It really depends on what the interest is of these two parties and what they have in mind. If they have something in mind that it could start this summer well that could be but realistically we are looking at a cargo service using two vessels back and forth so we are looking more at next spring or summer."



Contact: Diane Stackhouse
 Phone: 845-565-7210 ext.11
dianes@raystransportation.com (or)
diane@eastcoastrailroadservices.com

FOR SHIPPERS:

Current services include distribution, cross-dock, and side-track leasing

Storage: four roofed areas with a total of 32,000SF, plus 10,000SF enclosed.

Cross-dock: CSXT service for all car types, 286,000 pounds. Up to 20 car spots. Trackmobile switching.

Distribution: Flat-bed services within a 300-mile radius by affiliate Ray's Transportation, Inc.

Side-track leasing: Up to 20 car spots.

Located 60 miles north of New York City.

mailing address: 42 Argenio Drive, New Windsor, NY 12553

FOR RAILROADS:

Current services include distribution, tie-plating, & recycling

Removal, reuse, and disposal of track materials.

New track materials warehoused, repackaged, palletized, and delivered.

Pre-plating of ties, and lease of proprietary tie-plating machine.

Location info on Shipcsx.com
 CSX-served at Ray's Transportation, 55 Windsor Highway (Rt.32), New Windsor, NY.

**APTA in favor**

Jean Marc Picard, executive director of the Atlantic Provinces Trucking Association, said the trucking industry is interested. "Right now we only have one option, Marine Atlantic. There is also Oceanex but it is not the same service and is not in direct competition. But a new service would probably target traffic from northern New Brunswick and anytime to you can shave a few hours off the road and put a truck on a vessel you not only save on fuel but on the wear and tear on the equipment."

From a carrier's standpoint, to switch to a new service requires 100% service reliability and cost efficiencies.

Doucet said for the time being the port authority isn't focusing directly on the trucking industry. "We are focusing more on getting the vessel service and getting someone to operate the vessels and then we will jointly approach the trucking industry. They won't change what they are doing or switch any cargo over unless it is a reliable service they are sure they can depend on." {Discussions with Tom Peters 23.June.11}

Marine Atlantic

The trailer and drop-trailer service for Newfoundland is a major part of Marine Atlantic's business. In 2009/10 the ferries between North Sydney and Port aux Basques, and North Sydney and Argientia, carried a total of 96,694 commercial vehicles, mainly trucks and trailers. {Marine Atlantic Annual Report 2009/10}

Marine Atlantic charges per foot. For example, a one-way crossing between North Sydney and Argientia for a commercial vehicle between 40 feet and 50 feet in 2011 cost \$907.46 including a fuel surcharge. {Marine Atlantic

website}.

Land purchase

In an unrelated development, the Port of Belledune recently purchased 1,400 acres of land that surrounds port property for an undisclosed price from Xstrata Zinc Inc. “The land was available and we were able to negotiate a very good price. We bought it so nobody else could buy it and we can control what goes on or built in and around the port,” Doucet said. The authority has nothing planned for the land but bought it mainly “for protection.”

Traffic

Vessel traffic at the port is on par with this time last year, Doucet said, but she expects business to pick up over the summer months as the Arctic shipping lanes open. “That is typically the busy season so hopefully things will keep increasing throughout the summer.” {Doucet in discussions with Peters 23.June.11}

RAIL SHIPPERS

Described in this issue.

Our *Directory of Rail Freight Facilities in New England* has more information on the companies denoted with their directory number.

Ford (PAS, Massachusetts) Ayer terminal expanding
 Katahdin Paper (MMA, Maine) Another possible buyer.
 Knowlton (NY, NYOG) Irritant to Bridge and Port Authority?
 PSNH (ST, New Hampshire—see *Regional*) Receives limestone.
 Transflo (CSXT, Massachusetts) Update on Westborough.
 ?? (GU, Massachusetts) Wood pellet bagging in West Upton.

ATLANTIC NORTHEAST RAILS & PORTS

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HOWEVER, anyone may quote bits of articles, with attribution, under the fair use doctrine.

Coverage

The newsletter covers the operating freight railroads and ports in New England, the Maritimes, and eastern Québec, as well as the government environment they function within. Coverage includes passenger rail and ships when relevant to freight operations.

Frequency and the e-bulletin

ANR&P appears at least four times a month. We send a formal issue twice a month, via post or e-mail. Between the issues, we send out

the *e-bulletin*, only by e-mail. All information in the *e-bulletin* is included, and often updated, in the issue.

Stories not updated for the issue are noted with an asterisk. I urge readers to look at the issue's updated stories (those without an asterisk).

Readers building a personal archive of the newsletter should discard the e-bulletins. All subscribers have access to the newsletter archive on the web, via password, at www.atlanticnortheast.com. If you do not have a password, merely request one from me.

Pricing

Subscriptions cost \$395 for professionals, \$125 per year for students, young and old. (Subtract \$30/year for e-mail). Introductory prices available. The *e-bulletin*, sent by e-mail at least weekly between issues, is free of charge to all subscribers.

Purpose

Atlantic Northeast Rails & Ports, née *Maine RailWatch* (1994-1997) and later *Atlantic RailWatch* (1998-1999), is dedicated to the preservation and extension of the regional rail network. The editor believes that publishing news on railroads and ports spotlights needed action to preserve the rail network. The publication also imbues the region with a sense of an interdependent community, employing the network to move rail and port traffic. 'No railroad is an island, entire unto itself.'

E-ISSUE

EXHIBIT 21

Town of Upton, MA
Railroad Fact Finding Committee
Questions Raised and Committee Findings

Question #: 016

Submitted By: Bill Taylor

Motion to Study the Question: Passed (3-2)

(Background) Whether a particular activity constitutes “transportation by rail carrier” and qualifies for preemption is a case-by-case, fact specific determination that can only be made by the STB. As such, the Committee must have a thorough understanding of the activities conducted by the G&U in order to determine whether it believes all or some of those activities might be deemed “transportation by rail carrier” by the STB in order to determine whether to seek a ruling from the STB. The following questions are intended to help gain a thorough understanding of the pellet bagging activities.

(Questions) Is wood dust (aka fines) removed from the pellets before they are bagged? If so, what is the process for removing the dust? Vacuuming? Screening? Both? Another operation? If wood dust is removed, are wood pellets manufactured from the collected dust? Are the pellets bagged in bags designed for retail sale? For example, do they display such things as: UPC/bar code, the manufacturer’s name, product name, and/or quantitative and qualitative information about the wood pellets, and/or storage and/or use instructions? Do the manufacturers specify how the pellets are bagged and palletized (for example, such things as what bags to use, quantity, type of seal, fines content, moisture content, contaminant content, number of bags per pallet, how and/or what materials are used to wrap pallets), either directly or through a party acting on their behalf? Do the pellet manufacturers provide the bags or are they acquired subject to specifications provided by the manufacturers?

(Clarifying Note) It is intended that any of the Town departments that have knowledge of how the pellet bagging operation is conducted answer the questions or, for any questions the Town cannot answer, that the Board of Selectmen or Town Manager ask the G&U to answer the questions.

Town of Upton, MA
Railroad Fact Finding Committee
Questions Raised and Committee Findings

Question #: 016

Submitted By: Bill Taylor

Committee Findings:

1. G&U Response³⁴: Wood dust is removed by means of vacuuming and screening before pellets are bagged. Wood dust has not been reused or repelletized³⁵. Bags intended for retail sale are acquired by the transloading subcontractor subject to specifications provided by the producers, and the bags display the producer's name and various other information specified by the producers. A standard bag containing 40 pounds of pellets and is generally shipped out of the yard by truck on pallets containing 50 bags each. At this time, Grafton & Upton Railroad is providing transloading services for 3 pellet producers at the yard.

³⁴ [Reference 010 - An e-mail dated April 26, 2012 from James Howard to Blythe Robinson](#)

³⁵ This statement is different from the following statement made by John Kronopolus, MA Department of Environmental Protection (DEP): "any dust is collected, made into pellets, and bagged." This is documented in his memo summarizing a visit made to the Maple Avenue facility on May 11, 2011 by representatives of MA DEP, the Upton Town Manager, members of the Upton Board of Health, and the Chief of the Upton Fire Department with representatives of G&U and GU Rail Care. [\(see Reference 026\)](#)

EXHIBIT 22

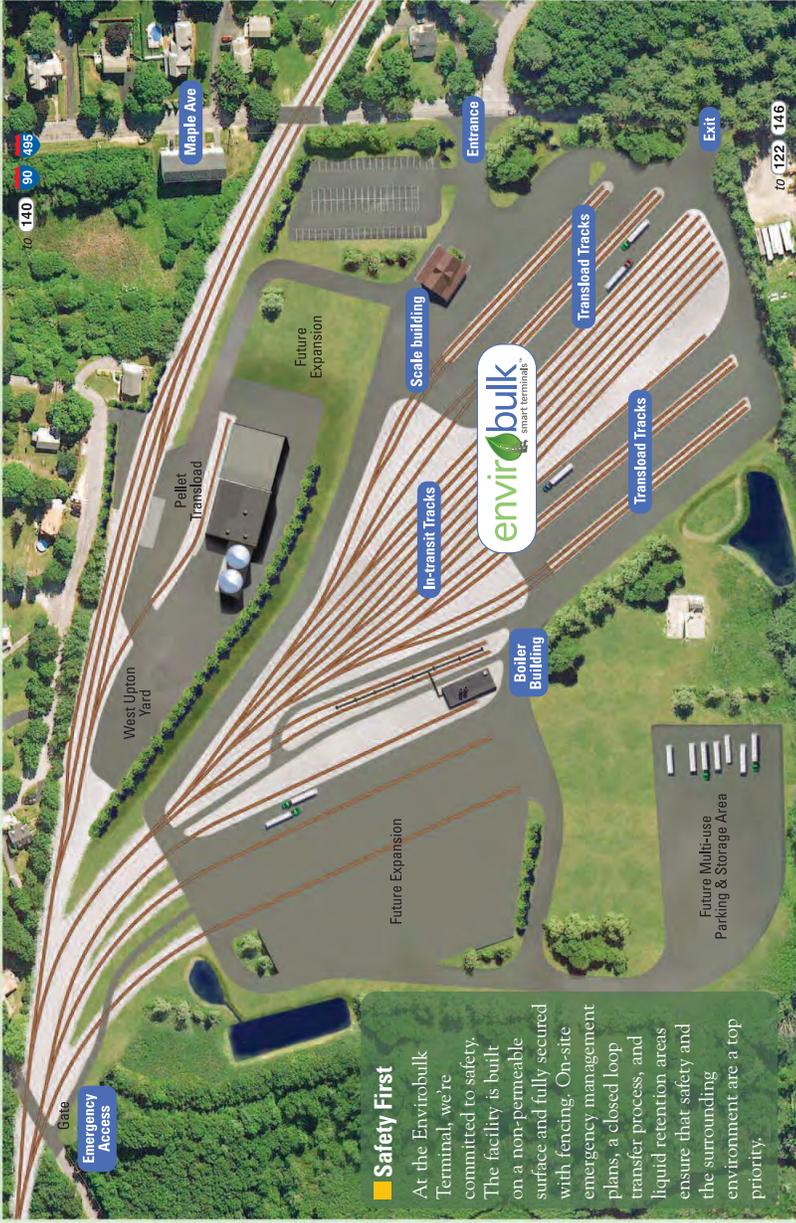


The difference is in the details

The Envirobulk Terminal's railroad-owned, 38-acre site is located in Upton, Massachusetts, near the interchange of I-90 (the MassPike) and I-495. The facility's strategic placement, broad range of services, flexible operations, and excellent connections - both rail and highway - are unequalled in any other Northeast transload. Over 100 "live" transload spots will be available, backed by over 70 in-transit spots. The facility is an open terminal, but also benefits from the on-site 3PL trucking and transload services of industry-respected provider Dana Transport. Interstate access allows for one day (or less) travel times throughout New England and much of the Northeast.

Because the Envirobulk Terminal is part of a shortline railroad and managed by one of North America's premier bulk operators, its knowledgeable staff can respond to your individual needs much quicker and easier than at other terminals. On-demand switching, extended terminal hours, quality control, and inventory management are only a few of the custom services that they can provide.

The Envirobulk terminal is also part of the Grafton & Upton's I-90/I-495 Logistics Hub. This allows customers to take advantage of the wider range of 3PL services available within the hub. These include: truck weighing, pellet packaging, warehousing, liquid bulk and pellet storage, and truck storage.



■ Safety First

At the Envirobulk Terminal, we're committed to safety. The facility is built on a non-permeable surface and fully secured with fencing. On-site emergency management plans, a closed loop transfer process, and liquid retention areas ensure that safety and the surrounding environment are a top priority.



TANK CARS

■ Liquid Bulk Services

Liquid bulk products have unique needs. Let us safely and efficiently help you with:

- Biodiesel
- Syrups
- Ethanol
- Vegetable oils
- Liquid pump service
- Railcar heating



LOGISTICS

■ Transport Services

Our 3PL partner has over 35 years of experience in bulk transport. Look to them to help you with:

- Truck Wash
- 3PL Services
- Dry Bulk
- Liquid Bulk
- ISO Containers



HOPPER CARS

■ Dry Bulk Services

Shipments large or small, we can handle:

- Plastics
- Cement
- Flyash
- Fertilizer
- Sand
- Lime
- Flour
- Sugar
- Starch
- Grains



RESPONSIBILITY

■ Environmental Commitment

Rail is the most environmentally friendly way of moving freight over land. The Envirobulk Terminal allows for:

- Utilization of rail closer to the customer
- Reduction of carbon emissions
- Servicing of non-rail customers



EXHIBIT 23

Grafton & Upton Railroad Company

929 Boston Post Road East
Marlborough, MA 01752
508-481-6095 * Fax 508-460-0578
E-mail: jon@firstcolonydev.com

December 16, 2011

**SENT BY FIRST CLASS MAIL &
CERTIFIED MAIL RETURN RECEIPT REQUESTED:**

The Railroad Fact Finding Committee
Town of Upton
1 Main Street
Upton, MA 01569
Attention: Mr. Gary Bohan, Chairman

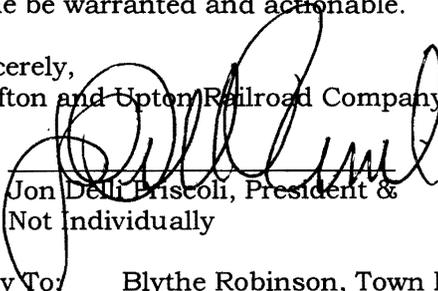
Dear Mr. Bohan & Committee Members:

This letter is being written and directed to you on behalf of the Grafton & Upton Railroad ("G&U") to put you on notice of the following:

1. All of the property of the G&U, including the West Upton Rail Yard at Maple Avenue, and all rights of ways(s) and land appurtenant thereto is private property and at no time are you or your agents allowed at or upon the property of the G&U, without the express written consent of the G&U, and
2. The G&U is an active railroad, and at no time are you to take any steps and/or actions that interfere, affect, or the G&U's daily business of interstate transportation.
3. The Committee cannot and will not speak to, interview, question, telephone or communicate with anybody from the G&U, or any of its subcontractors, including but not limited to Grafton & Upton Railcare, LLC, Dana Transport, First Colony Development Co., Inc. and all of their employees and all other companies and individuals working for or on behalf of the G&U.

Although we know that you will all abide by this notice; should you fail to abide by the same, each and every member of the Railroad Fact finding Committee is put on notice that any trespass and/or interference with the daily business of the G&U will be considered either an unreasonable interference with the advantageous business relationship(s) of the G&U and will result in the filing of all appropriate legal action(s) against each such transgressor(s) individually, including a damages claim, should the same be warranted and actionable.

Sincerely,
Grafton and Upton Railroad Company

By: 
Jon Dell Priscoli, President &
Not Individually

Copy To: Blythe Robinson, Town Manager
Upton Fire Chief
Upton Police Chief
Federal Railroad Administration

EXHIBIT 24

Grafton and Upton Railroad

TARIFF 5000

**BULK TRANSFER TARIFF
PROVIDING SERVICE
ON
DRY AND LIQUID COMMODITIES
AT STATIONS NAMED IN ITEM 110
Located on**

Grafton and Upton Railroad

BULK RAIL-TRUCK TARIFF

ISSUED: May 1, 2012

EFFECTIVE: May 30, 2012

ISSUED BY:
President
Grafton and Upton Railroad Company
929 Boston Post Road East
Marlborough, MA 01752

**TARIFF GU5000
RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM 5

GOVERNING CLASSIFICATION AND EXCEPTIONS

Governed by the provisions of UFC 6000 Series, Uniform Classification Committee, Agent, and GU. (When shipments are made in Tank Cars, they will be subject to Rule 35 of the UFC except as to minimum weight, which will be shown in individual rate items.)

ITEM 15

EXPLOSIVES, DANGEROUS ARTICLES

For rules and regulations governing the transportation of Explosives and other Dangerous Articles by freight, also specifications for shipper's containers and restrictions governing the acceptance and transportation of Explosives and other Dangerous Articles, see Bureau of Explosives Tariff BOE 6000 Series.

ITEM 20

REFERENCE TO TARIFFS, ITEMS, NOTES, RULES, ETC.

(A) Where reference is made in this tariff to tariffs, circulars, items, notes, rules, etc., such references are continuous and include supplements to and successive issues of such tariffs and reissues of such items, notes, rules, etc.

(B) Where reference is made in this tariff to another tariff by number, such reference applies also to such tariff to the extent it may be applicable on intrastate traffic.

ITEM 60

NATIONAL SERVICE ORDER

This Tariff is subject to provisions of various Surface Transportation Board Service Orders and General Permits.

ITEM 75

METHOD OF CANCELLING ITEMS

As this tariff is supplemented, numbered items with letter suffixes will be used in alphabetical sequence starting with A. Example: Item 445-A cancels Item 445 and Item 365-B cancels Item 365-A in a prior supplement, which in turn cancelled Item 365.

ITEM 100

METHOD OF DENOTING REISSUED MATTER IN SUPPLEMENTS

Matter brought forward without change from one supplement to another will not be designated as "Reissued" by a reference mark. To determine its original effective date, consult the supplement in which the reissued matter first became effective.

**TARIFF GU5000
RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM 110

APPLICATION

The provisions of this tariff will apply on Dry and Liquid commodities, in bulk, at designated GU Bulk Transfer (GUBT) facilities at the following locations:

Massachusetts	West Upton
Massachusetts	North Grafton (self unloading only)

Each GUBT listed above is operated by an independent terminal operator (the "Terminal Operator"). The purpose of this tariff is to advise GU shippers of the services they may expect when utilizing a GUBT and the services of a Terminal Operator, but arrangements for service at a GUBT should be made between the shipper and the Terminal Operator. Upon request of the shipper, the terminal services named herein will be performed on carload shipments in bulk as described herein (See Note 1), which move in GU line haul service to or from the above terminals, subject to the charges, rules and regulations published herein.

To arrange for terminal services specified in Item 115 at locations specified above, Shipper will notify terminal before actual shipment of product is made, advising the terminal of the commodity and the car number to be shipped.

NOTE 1: GUBT facilities will handle Dry and Liquid Commodities in bulk when appropriate infrastructure and equipment for handling such Commodities are available. The Terminals will require shipper to provide Material Safety Data Sheets (MSDS) and will keep same on file at the terminal; product Handling Protocol for hazardous materials and such other information as may be required, including the need for special transfer equipment, personal protective equipment (PPE), pollution control, etc., prior to shipment of the commodity. GU reserves the right to refuse any commodity at its GUBT facilities.

ITEM 112

MOTOR CARRIER ACCESS

A shipper may retain a motor carrier to load or unload Commodity at GUBT. In order to load or unload Commodity at a GUBT, a motor carrier must execute an indemnity agreement among the motor carrier, GU and the Terminal Operator, covering the motor carrier's activities while at the GUBT. When this agreement is fully executed, a motor carrier is "preapproved". Carriers and their employees operating at GUBT site are required to conform to all such rules and procedures. A separate indemnity agreement must be executed at each location that the Operator is different.

All pre-approved motor carriers may deliver to or pull loads from a Grafton and Upton Railroad Bulk Transfer Terminal. Motor carriers may be required to assist in the connection and loading or unloading of the trailer. The motor carrier will be responsible for its equipment at all times and the driver must remain with the vehicle while loading or unloading. The motor carrier will comply with all required safety procedures, which will include the removal of vehicle keys while loading Hazmat products. Authorized terminal personnel will load or unload all hazardous materials.

(Continued on next page)

**TARIFF GU5000
RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM 112

MOTOR CARRIER ACCESS (Concluded)

A motor carrier that is not pre-approved will not be allowed to enter a GUBT, and the motor carrier driver must have a valid CDL (Commercial Driver's License) in his/her possession while conducting activities at the GUBT. Motor Carrier driver must have a DOT hazardous materials endorsement if transporting hazardous materials.

Concerning self-loading, an administration charge of \$75 per trailer will be assessed to the shipper, if the motor carrier is not the Terminal Operator. This charge applies to the self-loading of dry and non-hazardous liquid products. (See Note 1) The motor carrier should only charge the shipper a transfer fee only with no administration charges.

NOTE 1: For the purposes stated herein, "self loading" shall be defined as a motor carrier using equipment affixed to its equipment to perform the physical transfer of Commodity. Self-loaders must also supply all hoses, fittings, etc. in addition to Appropriate spill containment for the transfer of Commodity.

**TARIFF GU5000
RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM 115

A. BASIC SERVICES INCLUDED IN A TRANSFER

Unless otherwise agreed upon by the Terminal Operator and the customer, a transfer conducted at a GUBT will include the following at no additional cost:

1. Weigh empty trailer.
2. Inspection of terminal transfer equipment for cleanliness. This does not include self-load equipment.
3. Verification of motor carrier's shipment documentation.
4. Perform non-self load transfer at negotiated charge.
5. Seal loaded trailer and railcar from which product was removed.
6. Weigh loaded trailer.
7. Provide driver with scale ticket and product sample only if requested by the shipper or beneficial owner.

The Shipper and the Terminal Operator may agree upon the performance of services in addition to those listed above, at rates to be negotiated by the parties.

B. APPLICATION OF TERMINAL SERVICES

1. Prior to acquiring terminal services at a GUBT facility listed in Item 110, shipper or beneficial owner must provide said terminal and GU a MSDS covering the commodity to be handled, and, for hazardous materials, a Handling Protocol outlining hazards and procedures for safe handling. All hazardous materials require pre-authorization by the terminal operator prior to billing any shipments to the terminal.
2. Grafton and Upton, through an Independent Contractor, will perform the services named herein on carload shipments of Commodity in bulk, subject to charges, rules and regulations published herein. Grafton and Upton reserves the right to refuse to handle any Commodity at its sole discretion.
3. All commodities must have MSDS sheet and on file at the terminal prior to arriving for terminal services. For shipments of hazardous materials a Handling Protocol must be on file at the terminal prior to arriving for terminal services, Commodity(s) arriving at a terminal before receipt of an MSDS and Handling Protocol (as applicable) will be held subject to Track Occupancy Charges as specified in Item 140 and no transfers will be accomplished until this information arrives.
4. Commodity(s) that Grafton and Upton declines to handle under the charges, rules and regulations published herein may, at Grafton and Upton's sole discretion, be handled under a separately negotiated contract.
5. Terminal services are restricted to carloads received or forwarded in Grafton and Upton line haul service, none of the facilities listed in Item 110 are open to any type of switching.

(Continued on next page)

**TARIFF GU5000
RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM 115 (Continued)

C. UNLOADING OF RAIL CARS

Charges for unloading of railcars to trucks and unloading trucks to railcars at a GUBT will be determined and collected on an individual basis by the Terminal Operator, but will not exceed the rates set forth in item 120.

The handling characteristics of the commodity, manpower requirements and the transfer equipment required will determine the charges. Any truck detention charges incurred during the loading or unloading process and any overtime charges (Item 150) will be the responsibility of the shipper. However, charges for the services listed below shall be no greater than that set forth below. Further, any shipper may at any time communicate with GU or the Terminal Operator if it believes the transfer charges to be non-competitive based on market conditions.

For safety reasons, GUBT procedures require that at least two (2) qualified people be present during the transfer of any non-self load products. A truck driver on site qualifies as one of these people only if they have the necessary training and qualifications confirmed by their parent company. For self-load products only one (1) terminal operator employee, or one (1) qualified truck driver, will satisfy the safety requirement. Transfer rates may not be bundled with any assessorial or capital improvement requirements associated with the transfer.

ITEM 120

A. MAXIMUM BULK TRANSFER CHARGES

Applicable on shipments transferred from rail car to truck at the facilities listed in Item 110.

On commodities transferred in bulk, the following charges, subject to a minimum weight of 45,000 pounds per truckload per transfer, will be assessed for transfer at all Grafton and Upton Bulk Transfer facilities.

DRY BULK

	<u>Per 100 pounds</u>
Mechanical Conveyor or Auger Transfers	\$0.35
Plastics (STCC 28-211-XX)Transfers	\$0.40
Pressure Differential Transfers	\$0.35
Other dry Bulk Products	\$0.40
Hazardous Solids (Other than flammables)	\$0.47
Self- Loading [Non-hazardous products only]	\$75.00 per trailer

LIQUID BULK

	<u>Per 100 pounds</u>
Non-hazardous Liquids	\$0.38
Hazardous Liquids (Other than flammables)	\$0.47
Flammables	(Individually Priced)

(Continued on next page)

**TARIFF GU5000
RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM 120 (continued)

SPECIAL SERVICES

Additional scale weights	\$25.00 per weight
*first set of weights (inbound/outbound) included in transfer	
Tank Car Heating Charge	(Individually Priced)
Recirculation Charge	\$35.00 per hour
Inert Gas supplied by shipper or beneficial owner	\$60.00 per application
Packaging	(Individually Priced)
Replenishment Loading	\$500.00 per Trailer
Load Samples	\$18 per sample

NOTE 1: The 49 Code of Federal Regulations, Table 172.101 (Hazardous Material Table), as may be revised from time to time, will be used to determine if a product is hazardous. GU reserves the right to refuse to handle ANY commodity at a GUBT. Only authorized Terminal Operator personnel may transfer hazardous commodities. No preloaded tank trailers of hazardous materials are allowed on GUBT property while the facility is closed, unless authorized by Operator and GU in writing.

NOTE 2: Multiple commodities may be loaded in a compartmentalized trailer for a charge of \$60.00 for each additional commodity or compartment loaded.

NOTE 3: A replenishment load is a reverse transload, truck to rail, not associated with an outbound rail movement. Replenishment loading of hazardous material is strictly prohibited.

B. PELLET TRANSFER/BAGGING

Applicable on dry products transferred from rail and bagged at the Grafton Upton transfer/bagging facility in West Upton, MA.

On commodities transferred in bulk and bagged, the following charges, subject to a minimum weight of 180,000 pounds per transfer, will be assessed for transfer:

Transfer and Bagging	\$30.00 per ton
----------------------	-----------------

NOTE 1: Per Ton Charge includes product transfer from Railcar to transfer Silos, product handling from silos to bagging, shipping pallets, bag stacking on pallets, plastic protective pallet storage cover, shipping shrink wrap, loading finished pallets onto trucks.

(continued on next page)

**TARIFF GU5000
RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM 120 (concluded)

C. BILLING OF CHARGES

Unless arrangements to the contrary are made prior to shipment, charges for terminal services described herein will be billed to the shipper or beneficial owner by the Terminal Operator, except that Track Occupancy Charges (Item 140) will be charged, established and billed by GU through its third party billing agents.

If credit privileges are granted (a determination made on an individual basis), terms for the payment of Track Occupancy Charges will be 15 days from the invoice date.

ITEM 125

TERMINAL SERVICES

I. COMMODITY SAMPLING and INSPECTION

Transfer charges in Item 115 include the visual inspection of the exterior of the railcar, and the exterior of the trailer.

GU and/or the Terminal Operator reserves the right to take samples of any commodity transferred at GUBT facilities for its own purposes.

Top sampling of railcars must be agreed upon in advance by Shipper and Terminal Operator. Sample containers must be provided by Shipper at no cost to Terminal Operator. If a sample is requested, it must be taken at time of transfer; any samples that are requested to be taken at another time will be performed at a charge of \$50 per car.

II. SPECIAL SERVICES

Services beyond the scope of those customarily provided by a terminal will be priced on an individual basis.

**TARIFF GU5000
RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM 130

TERMINAL LIABILITY

I. LOSS OF WEIGHT

Allowable transfer losses will be one percent (1%) of the weight of the commodity on a six-month (January-June, and July-December) cumulative basis per shipper, per GUBT, and such loss will be considered standard operating loss not assessable against GU or the Terminal Operator (See note)

NOTE 1: Greater loss allowances may be required as a condition of acceptance for specific products when handling characteristics preclude complete unloading of the trailer or the railcar.

III. LIABILITY LIMITS

The liability of GU and/or the Terminal Operator with respect to activities in which each is engaged at GUBTs shall be limited to the negligence of GU and the Terminal Operator in the performance of the services described in this tariff. Furthermore, neither GU nor the Terminal Operator shall be liable for consequential, indirect, special or punitive damages, interest, attorneys fees, or any amount in excess of product or car owner's actual loss concerning the commodity shipped or the equipment utilized.

IV. CLAIMS

Only one claim for loss, damage and/or injury may be filed for each rail car handled under this tariff. No claim will be paid which is filed more than nine (9) months after product delivery or release of car from the terminal.

**TARIFF GU5000
RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM 140

TRACK OCCUPANCY CHARGES, DEMURRAGE, AND RELATED CHARGES

A. PRIVATE CAR TRACK OCCUPANCY CHARGES

To the extent applicable, this item will apply on private cars (See Notes 1 and 2) constructively placed or actually placed at a GUBT in lieu of demurrage provisions in Tariff GU 3000- series. Track occupancy charges will be billed and collected to shipper or beneficial owner of the Commodity on behalf of GU by the Terminal Operator.

Once a rail car is constructively or actually placed (See Note 2), “free time” (Including Saturdays, Sundays and Holidays) will be allowed as follows:

<u>Car Type</u>	<u>Free Days</u>	<u>Days 11 through 40</u>	<u>All Subsequent Days</u>
Covered Hopper Cars	10	\$50 per day	\$90 per day
Tank Cars	10	\$50 per day	\$90 per day

B. RAILROAD CAR DEMURRAGE

All railroad owned or controlled cars (See Notes 1 and 2) will be subject to demurrage under the provisions of Tariff GU 3000-Series. Demurrage charges will be billed to the shipper or beneficial owner of the Commodity.

C. NOTES AND OTHER CHARGES

NOTE 1: A private car is a railcar bearing other than railroad reporting marks

NOTE 2: Constructive placement is the date the railcar is available to be switched into the GUBT Terminal. Actual placement is the date the railcar was physically placed in the GUBT Terminal.

NOTE 3: When a railcar is constructively or actually placed at a GUBT and subsequently reshipped without any transfers having been made, a facility charge of \$500 will be assessed to the party issuing the reshipping instructions, in addition to all other applicable charges.

NOTE 4: At any time following actual placement of a railcar on a GUBT facility, if 30 consecutive days pass without product being removed from a railcar, GU reserves the right to remove such car(s) from the GUBT. The shipper of the railcar shall pay a charge of \$500 for this removal. This charge will be assessed each time a railcar sits for 30 consecutive days without product being removed and it becomes necessary to move the railcar. Track Occupancy Charges per this item will continue to accrue until such time as the car released empty.

**TARIFF GU5000
RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM 150

HOURS OF SERVICE & OVERTIME CHARGES

Normal working hours at the GUBT Terminals are from 7:00 A.M. to 6:00 P.M., exclusive of Saturdays, Sundays and Holidays (See Item 185).

All loading, unloading, & service must be ordered before 5 p.m. the day prior to the day that loading, unloading, & service is needed. Every attempt will be made to accommodate emergencies and requested times, but loading spots and other circumstances may require occasional modifications of requested times.

When service is required prior to 7:00 A.M. or after 6:00 P.M., arrangements must be made with the Terminal Operator in advance. When loading, unloading, & services are to begin after 5 p.m., written authorization for overtime to complete the process (if required) must be submitted before the process begins. The charge for services before or after normal working hours will be at a rate of \$60 per person per hour or fraction thereof, in addition to all other applicable charges (See Exception).

When service is requested at the GUBT on Saturdays, Sundays or Holidays (See Item 185), or when terminal personnel are required to make an extra trip to the terminal rather than performing continuous service, arrangements must be made in advance with the Terminal Operator. The charge for this service will be \$60 per hour per person subject to a four (4) hour minimum per person, in addition to all other applicable charges for service provided.

Authorization for overtime must be received in writing from the party responsible for paying terminal service charges.

EXCEPTION: No additional charges will be assessed if the motor carrier is at the GUBT and ready for loading before 4:30 P.M., and the delay causing the overtime is the fault of the Terminal Operator.

ITEM 160

ORDER PLACING

The shipper or beneficial owner will be responsible for providing GUBT with the name of the motor carrier authorized to transport the product, along with product transfer instructions. Such instructions may be initiated verbally but must be confirmed via facsimile, written communication, or through electronic means. Neither GU nor the Terminal Operator will be responsible for any problems concerning the shipment and performance of terminal services when the Terminal Operator has not received facsimile confirmation, or electronic communication covering each separate trailer from or to which Commodity is transferred.

**TARIFF GU5000
RULES AND OTHER GOVERNING PROVISIONS
GENERAL RULES AND REGULATIONS**

ITEM 165

RAIL CAR ARRIVING AT TERMINAL WITHOUT FULL WRITTEN DESCRIPTION OF LADING

Any railcar arriving at a GUBT without full written description of lading will be held at shipper's expense awaiting adequate and proper description or further instructions on disposition of lading. If such written description shows that the commodity is not one approved for transfer, that railcar will be released to shipper for disposition, subject to all applicable terminal charges, along with any other charges to which GU might be entitled.

ITEM 185

HOLIDAYS

Wherever in this tariff reference is made to "Holidays" it means the following:

New Years Day Thanksgiving Day
President's Day Thanksgiving Friday
Good Friday Christmas Eve
Memorial Day Christmas Day
Independence Day New Years Eve
Labor Day
(See Note)

NOTE: In the event one of the above Holidays occurs on a Sunday, the following Monday will be considered as the Holiday for the purpose of this tariff.

ITEM 190

EXPLANATION OF ABBREATIONS

ABBREVIATION	EXPLANATION
BOE	Bureau of Explosives
CDL	Commercial Driver's License
GU	Grafton and Upton Railroad
MSDS	Material Safety Data Sheet
NSO	National Service Order
PPE	Personal Protective Equipment
RER	Railway Equipment Register
STB	Surface Transportation Board
STCC	Standard Transportation Commodity Code
GUBT	Grafton and Upton Bulk Transfer
UFC	Uniform Freight Classification Committee, Agent

THE END

EXHIBIT 25

**West Upton,
Massachusetts**

2011 GUBT Service Terms and Guidelines



*Grafton and Upton
Railroad*



INTRODUCTION

Grafton and Upton Bulk Terminals (“GUBT” or the “Company”) operates New England’s leading multi-modal transloading, materials management, and logistics services network. This network allows for the transfer of commodities between railcars, trucks, storage silos, and containers. These Service Terms and Conditions (the “Document”) describe the terminals managed and services offered by GUBT and sets forth the terms and conditions under which it will arrange, provide, accommodate or make available its terminals and services. The terms and conditions in this Document apply to all transfers and activities occurring in GUBT terminals.

Grafton and Upton Bulk Terminals – Multi-Service Options

Facilities

GUBT operates a network of specialized terminals that allows Customers to transfer product between railcars, ocean containers, storage containers, and/or bulk trucks. The terminals are generally equipped with onsite management, offices, truck scales, paving, lighting, fencing and multiple types of transfer equipment. GUBT is prepared to tailor its services to meet your requirements. Locations and more detailed descriptions of service offerings can be found on GUBT’s website: www.graftonuptonrr.com.

Product Handling Capabilities

GUBT can handle a variety of products. Examples include:

<i>CHEMICALS</i>	<i>DRY PRODUCTS</i>	<i>AGRICULTURAL</i>	<i>WASTE</i>
<i>Acids/Corrosive Materials</i>	<i>Cement</i>	<i>Beans</i>	<i>Auto Shredder Residue</i>
<i>Biodiesel</i>	<i>Fertilizers</i>	<i>Ethanol</i>	<i>Construction & Demolition Debris</i>
<i>Caustic Liquids</i>	<i>Lime</i>	<i>Flour</i>	<i>Municipal Solid waste</i>
<i>Combustible/Flammable Products</i>	<i>Phosphates</i>	<i>Starch</i>	<i>Used Oil</i>
<i>Compressed, Non-Flammable Gases</i>	<i>Sand</i>	<i>Corn Syrup</i>	
<i>Liquid Petroleum Gas</i>	<i>Flyash</i>	<i>Vegetables Oils</i>	
<i>Plastics</i>			

Prior to shipping to a GUBT terminal, all products must be approved by GUBT to ensure safe transloading and to meet your quality requirements.

For more information on obtaining product approval, please contact us at gubulk@graftonuptonrr.com.

SERVICE OPTIONS

GUBT offers two service options at its terminals: Terminal Transfer or Self- Unloading. With both service offerings, GUBT may offer other special services at its terminals to simplify your distribution processes, including, but not limited to, product dilution, heating, blending/sifting/sparging of products, inert gas application and product testing. Additional charges for these services will apply based on the service requested. The service levels are described in the following table:

Terminal Transfer

- Liquid and Dry Products

Product Transfer

Conducted by terminal personnel, trained in safety and quality handling procedures for your product and using equipment tailored to your needs.

Operations Management
Facilities Management
Inventory & Order Management
Quality Control

Self-loading

- Dry, non-hazardous products.

Product Transfer

Conducted by motor carrier with a self-loading truck.

Operations Management
Facilities Management
Inventory & Order Management
Quality Control

Terminal Hours of Operation

Terminal hours are Monday through Friday, 7:00 a.m. to 6:00 p.m. After-hours service or access will be considered on a case-by-case basis.*

Holiday Schedule

GUBT terminals observe the following holiday schedule:

New Years Day Thanksgiving Day
 President's Day Thanksgiving Friday
 Good Friday Christmas Eve
 Memorial Day Christmas Day
 Independence Day New Years Eve
 Labor Day

Holidays are observed on their actual day. If, however, a holiday falls on a Sunday, it is observed on the following Monday. Terminals outside the United States may observe a separate holiday schedule.*

PREMIUM SERVICE OFFERINGS

Load Scheduling and Detention Charges

Scheduled transfer times are utilized in GUBT terminal operations; therefore, at least 24-hour notification, and corresponding GUBT acceptance, is required. Transfers scheduled with less than 24-hour advance notice will be managed according to available transfer times and thus may be subject to additional charges. If the motor carrier is on time, GUBT will attempt to complete transfers within two (2) hours from the scheduled transfer time; if the motor carrier is late, GUBT will attempt to complete the transfers within two (2) hours from actual commencement of the transfer. A transfer shall be measured from the time when a truck weighs into a terminal to the time it weighs out of a terminal. If the motor carrier arrives late, overtime charges may apply.

GUBT will attempt to accommodate early or late motor carrier arrivals if resources are available.

GUBT is not responsible for truck detention charges on scheduled loads unless they are incurred as a result of GUBT's gross negligence and then only if a motor carrier provided detention slip has been signed by a GUBT terminal representative indicating GUBT's preliminary agreement or disagreement with the claim's validity. GUBT is not responsible for any direct or indirect costs incurred by Customer due to equipment failures at the GUBT terminals. The Customer will be responsible for all other overtime and truck detention charges. GUBT accepts no responsibility for truck detention charges on unscheduled loads regardless of cause. All truck detention claims must be submitted to GUBT within 60 days of the scheduled load date to the address listed in the Notice section.

Railcar Inspections

Railcars will be visually inspected within twenty-four (24) hours of arrival or on the first operating day they are positioned in the terminal (excluding weekends and holidays), whichever is later, and also before departure from the terminal.

Inspections will include or look for:

- Verification that Customer seals are intact, if applicable.
- Visible leaks in railcars.
- Visible damage to railcars.
- Broken safety devices pertaining to the transfer process.
- Appropriate placarding.

Customer will be notified of any deficiencies and will be responsible for the cost of needed repairs and cleanup or remediation, if any.

Trailer Inspections

Motor carriers are required to produce a washout slip before commencing a transfer of product to a trailer if required by the Customer per the Service Delivery Specification Sheet (SDSS). GUBT will make a reasonable effort to visually inspect a trailer, before a transfer, to determine if it appears to be clean, dry, odor free and suitable for service. Unique Customer inspection requirements will be considered by GUBT once provided and agreed to by GUBT.

GUBT does not guarantee that a trailer is free of materials that could contaminate products.

Customer will be notified of any observed material deficiencies and will be responsible for the repair or removal of equipment as applicable.

Railcar and Trailer Sealing

General Sealing Procedures:

- Sealing procedures for full and empty railcars, following actual placement at GUBT's terminals, are unique to each Customer, established at the onset of business and may be amended as mutually agreed to by Customer and GUBT.
- Actual placement is defined as "physically placing a car for loading or unloading at a place designated by, or usually used by, the shipper or consignee.
- Sealing procedures for full and empty trailers are unique to each Customer, established at the onset of business and may be amended as mutually agreed to by Customer and GUBT.

GUBT will provide and utilize standard metal or plastic seals for plastics and food grade products. Customers must, at their cost, provide seals unique to their requirements (e.g., cable seals).

Product Sampling

General Sampling Standards:

- Sampling procedures for railcars, following actual placement at GUBT's terminals, or loaded trailers are unique to each Customer, established at the onset of business and may be amended as mutually agreed to by Customer and GUBT.

Weighing of Trucks

Where truck scales are available, GUBT will obtain one complete set of truck weights (inbound and outbound) for all truckloads in conjunction with a corresponding transfer. Call for scale locations and pricing on any additional truck weighing.*

OTHER SERVICES

Extra Labor

GUBT makes reasonable efforts to empty each railcar as completely as possible using normal mechanical transfer procedures. When a transfer cannot be performed or a railcar cannot be completely unloaded by conventional mechanical means due to the characteristics of the product or railcar configuration, manual labor, if available and at additional charges, will be provided to assist in the transfer. The Customer must approve the provision of manual labor in advance.

Railcar Heating

Hot water or steam heating is available at selected terminals on a per hour, per car charge basis.*

**For additional information and details on availability, rates and/or services provided, call us at 508-529-6674*

Inert Gas

Inert gas will be applied as requested by GUBT's Customers and subject to applicable charges.*

Customers are required to supply the inert gas and associated equipment.

Self Loading

Self loading operations are available for dry, non-hazardous product transfers as conditions permit. Self loading of liquids or hazardous materials is not permitted. Customers must supply all equipment and appropriate spill containment for self loading of products. Self loading consists of a motor carrier, utilizing a self-loading truck, conducting the product transfer.

GUBT provides two services when self loading services are used: coordinating railcar switching at its terminals and weighing trucks. For self loading, Customers must utilize experienced, trained personnel, who are knowledgeable about the safety requirements for the specific loading and unloading operations being performed, including, but not limited to, connecting and disconnecting procedures. Such personnel shall be responsible for complying with the provisions of this Document, including, but not limited to,

GUBT's Motor Carrier Operating Provisions, during the entire operation and must follow appropriate individual Customer procedures and applicable governmental requirements.

ADDITIONAL SERVICES

For availability and pricing on services not listed above, contact GUBT.*

STANDARDS/EXCEPTIONS

GUBT Pricing

GUBT's Price Listed on Grafton and Upton Tariff 5000 available on-line or from your GUBT commercial representative. GUBT pricing may be amended or cancelled from time to time.*

Transfers

The movement of one specific product between a bulk railcar, container (storage or ocean), and/or bulk truck, or from, to and/or between segments thereof, shall be considered a "transfer" for the purposes of this Document, irrespective of the amount on the transfer order submitted.

Minimum Transfer Amount

The charge for each transfer is based on a minimum weight of 40,000 pounds of product.

Product Replenishment

Unless agreed to by GUBT, a product replenishment fee will be assessed on product transferred without a prior or subsequent line-haul rail movement.*

Railcar Reconsignment

A reconsignment fee will apply when a car is received and reshipped without a transfer of product occurring.* This fee is in addition to any other applicable charges.

Startup Charges

GUBT may assess startup charges on new business if GUBT determines they are appropriate.

Transfer of Returned Product

The charge for the transfer of returned product is the same as the original transfer charge. Customer is responsible for all costs of returning and transferring the returned product.

Energy Surcharge

GUBT has implemented an "Energy Surcharge" on all shipments moving through any terminal that require **heat application services**. The Energy Surcharge is based on the "U.S. No. 2 Diesel Retail Sales by All Sellers."

The energy surcharge rate will change the first day of each month and will be based upon the prior Monday's posting of the weekly "U.S. No. 2 Diesel Retail Sales by All Sellers." Updates regarding the application of or changes to this surcharge will be posted on the GUBT website.

To access further information and updates regarding GUBT's Energy Surcharge, data will be available via www.graftonuptonrr.com. If you have any questions, please contact your GUBT commercial representative.*

Overtime

Transfers or any pickup after normal working hours, or on an exception basis, require prior approval of GUBT and will be subject to overtime and other applicable charges. Overtime authorization must be in writing and signed by the Customer. Customer may designate, in writing, the authority of certain employees within their organization to request and authorize overtime verbally. This authorization will remain in place until the Customer submits a cancellation request in writing.

Overtime charges are calculated on a per minute basis and are determined as follows:

- An overtime charge per person will be assessed for work requested before or after regular working hours. This includes set-up and breakdown time before and after the actual transfer.
- Overtime required after normal working hours, as a continuation of a service commenced during normal working hours, will be based on actual time.
- Overtime required with respect to service commenced outside of normal working hours, including but not limited to weekends and holidays, will be billed based on a four-hour per person minimum.

GUBT procedures require at least two workers to be present during the transfer process for all Premium Level business.

Track Occupancy Charges

The constructive placement of a railcar at a GUBT terminal occurs when a railcar is available to be switched into a GUBT terminal. The constructive placement date of a railcar is the date when constructive placement of the railcar occurs. As each railcar is constructively placed at a terminal, a prescribed number of "free days" is allowed with respect to that railcar before assessment by GUBT of Track Occupancy charges commences. The Track Occupancy charges vary depending upon the car type: private, railroad-owned, or leased.*

If a railcar is constructively placed on a Friday, Saturday or Sunday, the calculation of free days and Track Occupancy charges begins the first Monday following the constructive placement date.

Track Occupancy charges cease on the date of the final transfer. The car release date is the same as the date of the last transfer if the terminal is provided specific written instructions as to the disposition of the railcar by 12:00 p.m. (noon) on the date of last transfer; otherwise, the railcar will not be released until the Customer has provided the terminal with those instructions.

GUBT bills Track Occupancy charges by individual railcar on a per day basis, including weekdays, weekends and holidays.*

Some environmentally regulated products are subject to a limited number of days that railcars may be placed at a GUBT terminal. GUBT will assist in managing inventory levels at the terminal, but does not guarantee "first in, first out" railcar ordering or transferring of product(s).

Required Method of Communication

GUBT requires all communications regarding matters such as car movements, order requests, etc. be communicated electronically. The Customer may communicate with GUBT via e-mail or facsimile. If a Customer utilizes a different communications system, additional charges may apply for data entry services.

Customer Systems Policy

Customer systems #, including third party and proprietary systems, are not supported at GUBT terminals. Should a Customer desire support of such a system, GUBT Marketing & Logistics personnel will, at the Customer's request and expense, perform the necessary research to determine the requirements and feasibility of supporting such system(s).

Only with the approval of GUBT's Marketing & Logistics, and subject to mutual agreement regarding the associated terms and charges, will GUBT authorize the installation of equipment and provide any needed additional personnel and systems support.

#Systems refers to any type of hardware and/or software application a Customer proposes to implement at, or link from, GUBT locations as well as any connectivity (i.e., via the Internet, modems, etc.) requirements for these systems.

MOTOR CARRIER OPERATING PROVISIONS

Purpose

The purpose of this section is to establish operating and safety requirements, policies and procedures for motor carriers conducting operations within a terminal.

Motor Carrier Access

Terminals are generally open to all motor carriers, but GUBT reserves the right to restrict or deny access to any motor carrier or their personnel at GUBT's sole discretion. All motor carriers using a terminal must follow and comply with these Motor Carrier Operating Provisions.

Motor Carrier Access Agreement

Each motor carrier, at the corporate level, must obtain an Access Agreement form from GUBT and shall provide a signed copy thereof to GUBT, prior to accessing a GUBT terminal. Motor carriers using the terminals are expected to abide by the provisions of the Access Agreement, this Document, and any additional documents, local or otherwise, adopted by GUBT.

General Safety

Every motor carrier shall exercise, and shall cause its employees and agents to exercise, a high level of caution at all times while within a terminal. Every motor carrier shall take all steps necessary to remain informed and to keep its employees and its agents informed of conditions and activities at terminals where the motor carrier is present. Every motor carrier shall conduct, and cause its employees and agents to attend, safety training programs to promote the recognition of and appropriate response to terminal risks.

Each terminal will provide a safety briefing that summarizes the safety and emergency requirements in effect at the terminal to all non-terminal personnel. All motor carriers must display a GUBT-provided safety sign in their truck's windshield during each active transfer.

All vehicles shall observe a speed limit of 10 miles per hour while in a terminal unless otherwise posted.

Unless in an assigned "safe area," such as the terminal office or break room, motor carrier personnel are required to wear hard hats and safety glasses with side shields at all times. Safety shoes are required if motor carrier is an active participant in the transfer process. All motor carriers are responsible for providing their personnel with necessary Personal Protective Equipment.

Portable fire extinguishers are maintained throughout GUBT terminals in accordance with OSHA regulations. The fire extinguishers are identified with signs and/or red stripes above extinguishers. All

motor carriers on the premises shall familiarize themselves with the extinguisher locations closest to their work area before commencing their activities.

Certain activities are restricted on GUBT property, including but not limited to smoking and/or cell phone usage.

As part of their compliance with the OSHA Hazardous Communication requirements, GUBT terminal operators are obligated to maintain a book of MSDS's for all hazardous chemicals present in the terminal.

This book is available in the terminal office for review by any motor carrier personnel.

Working Track Protection

All motor carriers conducting self loading transfers in GUBT terminals, regardless of whether working during or after hours, shall ensure that the track on which they will be working has been protected by one of the following means:

- Switch Lockout and Blue Flag: Switch(es) providing access to the working track shall be lined against movement to that track and locked with an effective locking device (i.e., vandal-resistant, tamper-resistant, and capable of being locked and unlocked by workers within the GUBT terminal). In addition, a DOT-approved blue flag shall be installed at or near the switch or switches providing access to the track.

OR

- Derail Protection and Blue Flag: Derail device restricting access to the track, positioned no less than 60 feet from the end of the last car. The derail device must be locked in a derailing position with an effective locking device. In addition, a DOT-approved blue flag shall be installed at or near the switch or switches providing access to the track.

When a blue flag is placed during hours of darkness, a flashing blue light must be positioned on the flag device.

Electrical Safety

Motor carriers shall comply with the following requirements regarding electrical safety at GUBT terminals:

- All electrical equipment and cords shall be kept away from standing water. Ground-fault interrupter (GFI) circuits must be used, if feasible.
- Exposed wires shall be replaced immediately.
- Electrical cords crossing roadways shall be protected with safety cones or covers suited for truck traffic.
- Only electrical plugs with grounding pins shall be used.
- Electrical outlets shall be locked when not in use. If a motor carrier needs access to outlets after hours, the terminal manager will provide access subject to the provisions of "After Hours Terminal Access" security measures noted elsewhere in this Document.

After Hours Terminal Access

During normal terminal business hours, security gates will typically be left in an open position providing easy access to GUBT terminals. For motor carriers requiring after hours access to conduct self loading operations, the following must be completed:

- GUBT and a designated motor carrier management person shall seek to agree on the use of a "multiple lock and chain" or other system so that GUBT, railroad crews, motor carrier(s), etc. shall all have independent means to open terminal access gates.

- Motor carriers shall have a written key control system to ensure that no unauthorized persons have access to the terminal, and that it is known at all times which motor carrier employees have keys and shall, upon request, provide GUBT a detailed description of the system.
- Motor carriers shall close and lock gates behind them immediately upon both entering and exiting the terminal.

Prior arrangements must be made with the terminal manager for the following:

- Use of truck scales by motor carriers accessing a GUBT terminal after hours, and/or
- After hours terminal lighting.
- Terminal personnel must be present for all after hour pickups or loading of hazardous products

The terminal manager and motor carrier representatives shall determine appropriate emergency notification procedures prior to the start of any after-hours business.

Terminal Housekeeping

Housekeeping is an important part of maintaining a safe and quality-focused work environment. Motor carriers are required to assist in maintaining a clean, debris-free terminal by:

- Keeping loading areas free of debris and trash by using designated trash receptacles at the terminal;
- Disposing of all trailer and railcar seals in trash receptacles;
- Parking equipment only where designated by the terminal manager;
- Placing all equipment at an appropriate distance from the centerline of each track, in no event less than 9 feet from the centerline when not in use, to provide necessary clearance for rail operations. This is of particular importance for motor carriers utilizing the terminal after-hours, as most GUBT terminals are switched by rail crews between the hours of 7:00 p.m. and 5:00 a.m.
- For all self service transfers, motor carriers are responsible for sweeping, vacuuming and properly disposing of any spilled product immediately following a transfer.

Indemnity and Insurance

Motor carrier hereby releases, and agrees to indemnify and hold harmless, GUBT, its parent, affiliates and contractors and their respective directors, officers, employees, subcontractors, agents, successors and assigns (collectively for the purposes of this Document, the "GUBT Parties") from any and all Damages (as defined below), directly or indirectly, caused by, arising out of or relating in any manner to motor carrier's or its employees', agents', contractors' or invitees' negligence, intentional misconduct, failure to comply with one or more terms or conditions of this Document, or presence at or use of the terminals, condition or operations of Motor Carrier's equipment, except to the extent caused on a comparative fault basis by the negligence or intentional misconduct of the GUBT Parties. These release and indemnity obligations shall survive the completion or termination of motor carrier's use of or presence at the terminals and the termination, expiration, or non-renewal of any agreement related thereto. For purposes of this Document, the term "Damages" shall mean any and all claims, causes of action, lawsuits, losses, damages, liabilities, fines, penalties, payments, costs, and expenses, including, without limitation, attorneys' and experts' fees and court costs.

A motor carrier accessing a terminal must have the following minimum insurance coverages in effect:

- a. Commercial General Liability Insurance: \$1,000,000 per occurrence, naming GUBT and its affiliates as an additional insured and containing contractual liability coverage
- b. Automobile Liability Insurance: \$1,000,000 per occurrence, naming GUBT as an additional insured and covering owned, hired or non-owned motor vehicles

- c. Worker's Compensation Insurance: Statutory Amounts with waiver of subrogation rights where permitted by law
- d. Employer's Liability Insurance: \$ 1,000,000 per occurrence per employee

Policies shall contain waiver of subrogation rights endorsements unless where prohibited by state law and shall not have an exclusion for liability relating to railroad operations. Such policies shall further require that GUBT be given at least thirty (30) days' prior written notice of any cancellation or modification of such policies. Prior to accessing a terminal, a motor carrier must provide GUBT with certificates of insurance evidencing such coverage. The insurance and limits insured as shown above shall not limit, or be considered to limit, in any way motor carrier's liability hereunder, nor an agreement by GUBT or its affiliates to assume liability in excess of said amounts or for risks not insured against.

Hot Work Permits

Any motor carrier needing to conduct cutting/welding operations must obtain a Hot Work Permit from the terminal manager prior to commencing work.

Security

Motor carrier will allow, and will cause its employees and agents to allow, a search of motor carrier's personal or other vehicles prior to exiting terminals. No photography is allowed within a terminal without the prior approval of GUBT. GUBT shall have no responsibility to motor carrier, its employees or agents for articles lost or stolen while in a terminal.

GENERAL TERMS AND CONDITIONS

Coverage of Terms and Conditions

The terms and conditions in this GUBT Service Terms and Conditions Document shall apply to all use of, presence on, access to, and services provided in, GUBT terminals. By using GUBT's terminals, the Customer, shipper, motor carrier, or other third party using GUBT's facilities shall be conclusively presumed to have agreed to this Document's terms and conditions, even in the absence of an executed agreement between Customer, shipper, motor carrier or other third party.

Loss of Product

GUBT will, with respect to Premium and Value Service transfers only, endeavor to unload every railcar completely but shall not be responsible to a Customer for any losses of product if less than three (3) railcars from such Customer are received at a GUBT terminal during any calendar year. If more than three (3) railcars are received in any given calendar year and Customer determines there is a product loss during such calendar year (excluding returned material), Customer shall notify GUBT in writing of the alleged loss within sixty (60) days following the end of such calendar year. A one-percent (1%) apparent weight loss of product (calculated on an annual cumulative per shipper per GUBT terminal basis) shall be allowed and considered a standard operating loss not recoverable from GUBT.

GUBT utilizes a calibrated truck scale to weigh each truck containing the shipper's product before it departs the terminal. These truck weights are compared against the railcar weights provided by the Customer. If, in the course of transferring product from a number of cars, total apparent inventory losses exceed one-percent (1%), GUBT will review the following with the Customer:

- Railcar loading process at origin, to include method used to calculate the weight of product transferred into the car;
- Process to calibrate weighing equipment (e.g., a belt scale or railcar scale) at origin;
- Securing of outlets (e.g., gravity gates) on the railcars after transfer is complete;
- Evidence of leaking cars;
- The transfer process and inventory management process at the GUBT terminal; and
- Data source(s), information and calculation accuracy for cars and weights in question.

These areas and any additional factors will be considered in investigating the cause of the apparent loss of product. The objective is to understand and address the apparent product loss as quickly as possible when a negative trend is indicated. GUBT reserves the right to discontinue transfer activity if the root cause is not identified and/or corrective action proves ineffective.

Loss or Damage Liability Claims

GUBT's liability for loss or damage to property or delay in transfer or shipment shall be that of a warehouseman only, as it may be further limited by the terms of this Document. GUBT shall have no responsibility or liability for (i) loss or damage to product in, or transferred to or from, a railcar made the subject of, in whole or in part, self loading operations, (ii) loss of product if less than three (3) railcars from a Customer are received at a GUBT terminal during any calendar year, as described in the "Loss of Product" section of this Document, and (iii) standard operating losses of 1% or less as described in the "Loss of Product" section of this Document. GUBT will not be liable for any damages caused to the property or product of Customer caused by a third party outside of GUBT's control. GUBT shall, in no event, be liable for any more than its proportional share, on a comparative basis, of any loss, damage or delay, and its liability shall, in any event, be limited to the manufacturing cost of the product, plus freight costs, less salvage value. A claim for loss or damage to a product must be in writing and received by GUBT within sixty (60) days after loss or damage is identified.

Any claims not filed within sixty (60) days after identification of loss or damage, or, with respect to the "Loss of Product" section of this Document, sixty (60) days after calendar year end or for less than one percent (1%) apparent weight loss, are hereby completely and forever time-barred and waived. Only one claim for loss, damage and/or injury may be filed for each railcar handled hereunder.

Consistent with the duties of a warehouseman, GUBT will use commercially reasonable efforts, and will cause its contractors and agents to use such efforts, to protect the property and product of Customer while on GUBT premises; provided, however, that except to the extent caused the sole or gross negligence, or intentional misconduct of GUBT, GUBT will not be liable for any damages caused to the property or product of Customer caused by a third party outside of GUBT's control.

Force Majeure

GUBT shall be excused from fulfilling its obligations under this Document and any contract related thereto, and shall not be liable for any loss, damage or delay occurring due to conditions beyond its reasonable control, including, but not limited to, fires or explosions; acts of God, including, but not limited to, floods, hurricanes, tornadoes, earthquakes, unusually severe weather, and natural disasters; wars; insurrections; derailments; actual or threatened acts of terrorists or the public enemy; acts of governmental authority; actual or threatened labor action, lockouts or strikes; embargoes; quarantines; acts or defaults of the shipper, Customer, owner, transporter or any other party; or inherent defect, or perishable nature of the product.

Indemnification and Damages

Customer shall release, indemnify and hold harmless the GUBT Parties from and against any and all Damages arising out of or relating to Customer's, its motor carriers', its motor carriers' equipment, its contractors', its agents' or their respective employees', contractors', or agents' (i) negligence, intentional misconduct, or failure to comply with one or more terms or conditions of this Document or any associated agreements, or (ii) presence at or use of GUBT's terminals, except to the extent caused on a comparative fault basis by the negligence or intentional misconduct of the GUBT Parties. This indemnification obligation shall survive the completion of the last transfer and release of the associated railcar and the termination, expiration, or non-renewal of any agreement related thereto.

GUBT shall, except to the extent otherwise provided or limited in this Document, release, indemnify and hold harmless Customer and its directors, officers and employees from and against any and all Damages to the extent caused on a comparative fault basis by the negligence or intentional misconduct of GUBT or its contractors or their respective employees or agents. This indemnification obligation shall survive the completion of the last transfer and release of the associated railcar and the termination, expiration, or non-renewal of any agreement related thereto.

To the extent a spill or discharge is caused by the negligence, intentional misconduct or failure to comply with the terms or conditions of this Document or any other agreements with Customer on the part of GUBT, its contractors, or their respective employees or agents, the clean-up and remediation of the spill or discharge shall, as between GUBT and Customer, and except to the extent otherwise provided or limited in this Document, be the responsibility of, and the costs thereof shall be borne by, GUBT. To the extent a spill or discharge is caused by the negligence, intentional misconduct or failure to comply with the terms or conditions of this Document or any other agreements with GUBT on the part of Customer, its motor carriers, its other contractors or their respective employees or agents, the clean-up and remediation of the spill or discharge shall, as between GUBT and Customer, be the responsibility of, and the costs thereof shall be borne by, Customer. In that event, however, GUBT is authorized by Customer, at Customer's expense, to commence and carry out any and all containment or clean up operations deemed reasonable and appropriate by GUBT or required by governmental agency, law or regulation.

With the exception of indemnification obligations in this Document with respect to third party Damages, neither GUBT nor Customer nor their respective affiliates, contractors, agents, directors, officers, employees, successors and assigns shall have any liability to any other party under this Document or any related agreements they may have with one another, regardless of the circumstances, whether related to loss or damage to product, personal injury to or death of any persons, property damage or otherwise, for indirect, special, consequential, or punitive damages, whether known, contemplated, foreseeable or unforeseeable.

Insurance

GUBT or its contractors have procured and will maintain: (a) Employer's Liability Insurance in the amount of at least \$1,000,000; (b) Worker's Compensation Insurance in statutory amounts; (c) Commercial General Liability Insurance for bodily injury and tangible property damage with a combined single limit of at least \$5,000,000 for each occurrence and \$5,000,000 in the aggregate; and (d) Automobile Liability Insurance with a minimum limit of \$5,000,000 per occurrence. It is not GUBT's policy to designate Customers as additional insured's on such policies.

Preloading and Parking

The parking of vehicles\trailers within a GUBT terminal overnight and/or in preparation for the act of preloading a trailer within a GUBT terminal may be permitted from time to time at the request of Customer and the discretion of GUBT. Such preloading and parking will be at rates and within areas established by GUBT for each terminal from time to time, and subject to the Terms and Conditions in this Document and such others as GUBT may establish from time to time regarding preloading and parking at GUBT terminals. Notwithstanding any language to the contrary in these Terms and Conditions, GUBT, its affiliates and contractors, and their respective directors, officers, employees and agents (the "Relieved Parties") shall not have, and are hereby relieved, released and indemnified by the Customer and motor carrier, of and from, any liability or responsibility whatsoever for loss or damage to, or theft of, vehicles or their contents while preloaded or parked at a terminal, except to the extent caused by the intentional misconduct of a Relieved Party and any and all such claims are hereby completely and forever time-barred and waived.

Product Information

Customer represents and warrants that any and all information supplied by Customer concerning the content of a railcar or truck/trailer, and the identity, nature, and handling of a product, shall be the latest information known to Customer, accurate, and complete to the extent relevant to the associated Services.

Customer is liable for providing an accurate STCC (Standard Transportation Commodity Code) and MSDS.

Any railcar arriving at a terminal without a full written description of its contents will be held at Customer's expense awaiting a proper description or further instructions on disposition of the contents. If the written description shows that the product is not one approved for transfer, railcar will be released to Customer subject to all applicable terminal charges.

Title to Product

GUBT shall have no actual or beneficial title to any product enroute to or from, or located within, a GUBT terminal. The foregoing shall not, however, interfere with or preclude the exercise by GUBT of lien or other rights it may have at law or in equity with respect thereto.

Modification of Terms and Services

The terms of this Document may be changed by GUBT at any time without notice. The latest version is available on GUBT's website, at www.graftonuptonrr.com.

GUBT may, at its discretion and without liability to Customers, eliminate, modify or add services at any terminal, or terminate services and close a terminal, at any time.

Other Transportation Documents

Should any shipment be tendered with other documents, such as the Uniform Bill of Lading, a motor carrier bill of lading, a shipper bill of lading, or other shipping document, regardless of whether they have been signed by GUBT or its agent, each such document will serve solely, if they have any purpose, as a receipt indicating the transfer of the shipment, and their terms will not govern the services arranged or provided by GUBT. In no event will such documents serve as verification by GUBT of the nature, number, or volume of the content of a shipment.

Termination and Default

Absent a contractual provision to the contrary, GUBT may terminate its contractual arrangement(s) with Customer upon thirty (30) days notice if without cause, and immediately if due to default, regulatory changes or requirements, governmental action or imposition, or any other cause beyond the reasonable control of GUBT.

In the event of termination of the contractual relationship(s) between GUBT and Customer, Customer must provide GUBT, not later than ten (10) days following termination of the relationship, with shipping instructions regarding the return of any railcars, product or other property of Customer then on or in transit to GUBT premises. Should Customer fail to provide shipping instructions in the aforementioned timeframe, GUBT may, at its sole discretion and at Customer's expense, return such product and/or other property to origin or provide for disposal of the same. All costs of arranging for and completing the foregoing transportation and/or disposal shall be on Customer's account and expense and, if paid by GUBT, shall be promptly reimbursed by Customer to GUBT upon demand. Such expense will include, but may not be limited to, GUBT's reconsignment fee per GUBT's Standard Price List.

Compliance with Laws and Rules

GUBT, Customers and motor carriers shall comply, and shall cause their respective contractors to comply, with all laws, rules, regulations, ordinances, and GUBT published or otherwise provided policies and procedures applicable to the terminals, the Services and activities related thereto.

Hazardous Railcar Handling:

GUBT does not hold itself out to provide storage of rail cars containing hazardous materials. A Customer must arrange to forward each shipment of hazardous materials in a prompt and timely manner after acceptance at the GUBT facility.

If the Customer cannot arrange to forward the hazardous materials in a prompt and timely manner, the customer will need to make arrangements for storage of the hazardous materials at an alternative location. Track Occupancy charges are assessed by GUBT for a commercially reasonable time to permit Customers the opportunity to arrange for transfer of product. For hazmat cars held beyond a commercially reasonable time, GUBT reserves the right, upon prior written notice to Customer and subsequent failure to remove, to assess a penalty payment. In extreme cases, upon additional written notice, GUBT reserves the right to remove cars containing hazardous materials and/or make disposition of the hazardous materials contained therein.

GUBT has the right to refuse to accept carrier-tendered rail cars that contain hazardous materials if the hazardous materials cannot be forwarded by the Customer in a prompt and timely manner.

Interpretation and Venue

This Document and the contractual terms and conditions it establishes will be interpreted according to the laws of the State of Massachusetts excluding the principles thereof regarding conflicts or choice of law.

Any action or suit in connection with this Document may be brought in a court of competent jurisdiction in Worcester County, Massachusetts or the United States District Court for the Milford District of Massachusetts. The parties hereto consent to the jurisdiction of said courts and waive any rights to move said courts to transfer venue of such action or suit, or to dismiss such action or suit for lack of personal jurisdiction, improper venue or forum non conveniens. In addition, the parties hereto consent to a non-jury trial for any such action or suit brought before the court. Although the Document is printed in a format prepared by GUBT, it is the intention of the parties that the provisions of this Document be fairly interpreted, and not construed against GUBT. If any portion or all of a provision of this Document is determined by a court of law to be illegal or unenforceable, the remaining portion of the provision, if any, and the other provisions shall remain in full force and effect, and binding upon the Customer and GUBT. Time is of the essence with respect to the filing of claims or legal proceedings as provided for in this Document. A failure by GUBT or Customer to enforce a provision of this Document shall not constitute a waiver of that provision in the future.

Attorney Fees and Costs

In any legal action or other proceeding arising out of or relating to or for the enforcement of this Document or any related agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled from the non-prevailing party.

Relationship of Parties

Nothing contained in this Document shall be deemed to give any party the power or right to direct or control the day-to-day activities of the other. Neither this Document nor anything contained herein shall be deemed or construed to constitute GUBT and Customer (or its motor carrier) as principal and agent, partners, joint ventures, co-owners or otherwise participants in a joint or common undertaking, it being understood that the relationship between GUBT and Customer (or its motor carrier) is solely that of independent contractors.

Neither GUBT nor Customer (or its motor carrier) shall be or become liable or bound by any agreement, representation, act, or omission whatsoever of the other party unless specifically provided for in this Document or an addendum hereto. Customer's (or its motor carrier's) employees and contractors shall not be deemed to be GUBT's employees.

Headings

The headings of the provisions of this Document are inserted solely for convenience of reference and are not a part of this Document and shall not in any way affect, govern, limit, or aid in the construction of any of the terms or provisions of this Document.

Third Party Beneficiary

Nothing contained in this Document creates any third party beneficiary rights except to the extent an intent to do so is clear with respect to the language of the indemnity provisions.

Credit Terms / Payment / Billing Disputes / Finance Charge

GUBT Customers must establish credit with GUBT before the delivery of services by GUBT can be arranged and provided. Contact GUBT's commercial representative for your area to obtain an Application and Credit Agreement. This Agreement can also be found on GUBT's website: www.graftonuptonrr.com.

The Credit Application contains instructions on the completion and submittal process. Complete the Application and Credit Agreement to establish credit prior to arranging to move product to a terminal. Payment in full of undisputed GUBT charges must be received within fifteen (15) days of the date of the invoice. GUBT may at any time terminate credit provisions and require payments in advance for services.

Failure to pay all rates and charges may result in cancellation or suspension of service agreements. Payments due under service agreements may not be set off or withheld in any dispute with GUBT.

GUBT prefers payments be made electronically via its Electronic Funds Transfer (EFT) program. EFT helps Customers manage cash more effectively with the rapid, accurate, and uniform transfer of financial information. These funds transfers are initiated through the Automated Clearing House (ACH) operation of the Federal Reserve Bank.

Three options are available:

- ACH Debits. GUBT charges your company's bank account.
- ACH Credits. Your company sends payment to GUBT's bank account.
- Fed - Wire Transfers. Your company sends payment and remittance detail to GUBT's bank account.

To initiate an EFT agreement, please contact your GUBT Regional Business Development Manager.

All billing disputes must be submitted in writing with reasonable supporting documentation (email, fax, regular mail) outlining the reason(s) for and the amount of the dispute to the GUBT representative as indicated on the bill within 15 days of the date of the invoice. Failure to submit a dispute and supporting documentation within 15 days of the invoice date constitutes a waiver by the Customer of any right to dispute the invoice and acceptance of the invoice as presented.

A finance charge of 12% per annum (0.00329% per day) will be assessed against charges not paid when due. The finance charge will be assessed on the unpaid balance of any charge from the first day following the end of the applicable credit term through the date of receipt of payment in full. Finance charges will be billed monthly for all charges that were paid late in the prior calendar month.

A finance charge will be assessed on all disputed amounts determined to be valid and due to GUBT. The corresponding finance charge will be calculated from 15 days past the date of invoice to the date the disputed amounts are received.

Taxes

Customer shall be responsible for all sales and use taxes, value added taxes, excise taxes, withholding taxes, and other transactional taxes imposed by any federal, state, local, or international taxing jurisdiction on this Document or the goods and services provided hereunder. Customer shall be responsible for property or ad valorem taxes imposed on product or property handled by GUBT at Customer's request.

Notices

All notices to Grafton and Upton Bulk Terminals must be in writing and sent by

- a) U.S. certified mail, postage prepaid,
- b) Nationally recognized overnight courier service, or
- c) Successful facsimile or electronic transmission confirmed by copy sent by first class mail, postage prepaid, to the following address:

Grafton and Upton Railroad.
929 Boston Post Road East
Marlborough, MA 01752

Attention: Director of Marketing & Logistics

Notices sent in the foregoing manner will be effective upon receipt by Grafton and Upton Railroad

For more information, contact

Grafton and Upton Railroad
929 Boston Post Road East
Marlborough, MA 01752

For the commercial representative nearest you,
call 508.481.2023

or e-mail

gubulk@graftonuptonrr.com

www.graftonuptonrr.com.

EXHIBIT 26

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VIRIDIS ENERGY INC. - News Releases

HOME	ABOUT US	INVESTOR INFORMATION	NEWS	PRODUCTS	CONTACT
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July 01, 2012

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Viridis Energy Partners with National Transport Companies to Establish Operations in New England

December 30, 2011

Viridis Energy Inc. ("Viridis" or the "Company") (TSXV: VRD), announced today that, in an effort to reduce the costs of transporting wood pellets to the New England states, it has entered into a partnership with the Grafton Upton Railroad, a local short-line railroad, and Dana Transport, a national carrier and transportation service company. The partnership will enable the Company to ship its wood pellets in bulk to the Grafton Upton Dana Transport facility in central Massachusetts for final bagging and distribution to the New England states, resulting in a more cost efficient process, while also eliminating losses due to damaged packages incurred on route.

Viridis ships approximately 25,000 tons of its Okanagan brand wood pellets to New England, annually, which were packaged in forty pound, heavy duty plastic bags ready for sale. Transporting product in its finished state led to inefficient use of freight car capacity and exposed the bagged product to damage. Shipping wood pellets in bulk utilizes virtually all the capacity of the freight cars and results in no waste due to torn plastic bags, since bagging will occur close to final destination.

Previously, Viridis shipped product, ready for sale, to a warehousing facility in Monson, MA for distribution. The Grafton Upton Dana Transport facility located in Upton, MA is approximately 45 miles east of Monson and is equipped with a complete bagging operation, enabling Viridis to cost effectively ship bulk product, while bagging its product at a cost similar to its own operation.

Dana Transport, founded in 1976, has 50 trucking terminals and over 25 container service and leasing facilities throughout the United States and Puerto Rico. Its comprehensive rail and truck transportation services also include maintenance and repair and leasing. The Grafton Upton Railroad established a joint partnership with Dana Transport to develop the rail center in Upton, MA. The Grafton Upton Railroad is a privately owned, short line railway, which has been in operation since 1878.

"In an industry measured by volume, cost efficiencies are essential to maximize competitiveness and profitability," said Christopher Robertson, Viridis' CEO. "Transferring the packaging of our bulk wood pellets to Dana Transport not only reduces freight and spoilage cost, but also has a positive impact on our plant's production capacity. With the growth in demand for biomass accelerating, Viridis needs to focus on building capacity and efficiencies to successfully grow with the market. We are exploring several opportunities that will expand the company's production capabilities and market share, in North America and overseas."

Ron Dana, Dana Transport's founder and CEO, added, "The location of this facility in Massachusetts provides Viridis with advantages access to rail and truck routes, while the state-of-the-art facilities will ensure product quality and cost efficient bagging. Viridis will realize lower freight costs and avoid losses due to package damage that normally occurs in freight. We all look forward to developing a mutually beneficial alliance with Viridis."

Investor Contact: Yvonne L. Zappulla Managing Director Grannus Financial Advisors, Inc. 212-881-4108 Yvonne@GrannusFinancial.com

Company Contact: Michele Reblere Chief Financial Officer Viridis Energy Inc 905-847-5228 InvestorInfo@ViridisEnergy.ca

About Viridis Energy Inc. Viridis Energy Inc. (TSXV: VRD) is a publicly traded, "Cleantech" alternative energy company specializing in the agricultural and wood waste biomass. Located in Vancouver, B.C., Viridis Energy operates Cypress Pacific Marketing and Okanagan Pellet Company, two acquisitions in the wood pellet sector, thus providing the company with vertical integration for distribution and manufacturing. For more information on Viridis Energy Inc. please refer to the company website at www.viridisenergy.ca.

Forward-looking Statements

Certain statements in this release are forward-looking statements, which reflect the expectations of management regarding the Company's future operations. Forward-looking statements consist of statements that are not purely historical, including any statements regarding beliefs, plans, expectations or intentions regarding the future. Such statements are subject to risks and uncertainties that may cause actual results, performance or developments to differ materially from those contained in the statements. No assurance can be given that any of the events

7/1/12

VIRIDIS ENERGY INC. - News Releases

anticipated by the forward-looking statements will occur or, if they do occur, what benefits the Company will obtain from them. These forward-looking statements reflect management's current views and are based on certain expectations, estimates and assumptions which may prove to be incorrect. A number of risks and uncertainties could cause our actual results to differ materially from those expressed or implied by the forward-looking statements, including: (1) a continued downturn in general economic conditions in North America and internationally, (2) the inherent uncertainties associated with the demand for biofuels, (3) the risk that the Company does not execute its business plan, (4) inability to finance operations and growth (5) inability to retain key management and employees, (6) ; an increase in the number of competitors with larger resources, and (7) other factors beyond the Company's control. These forward-looking statements are made as of the date of this news release and the Company intends to update such forward looking information in the Company's MD&A in the event that actual results differ materially from such forward-looking statements contained herein. Additional information about these and other assumptions, risks and uncertainties are set out in the "Risks and Uncertainties" section in the Company's MD&A filed with Canadian security regulators.

Email Alert Subscription

Subscribe to receive email alerts when Viridis Energy releases news.
Enter your email address below :

	<p>About Us</p> <p>Overview Corporate Information Management</p>	<p>Investor Information</p> <p>Stock Information Investor Relations News Releases News RSS Feed</p>	<p>Products</p> <p>Okanagan Pellets™</p>	<p>Contact Us</p> <p>Investor Inquiry Yvonne Zappulla Grannus Financial Advisors Tel: 212.681.4108 investorinfo@viridisenergy.ca</p>
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EXHIBIT 27



OKANAGAN
PELLET COMPANY

**SIGN-UP AS A
DISTRIBUTOR**

**TOP 10
REASONS TO USE
OKANAGAN
SUPER PREMIUM**

Phone: 604.739.9973
Fax: 604.739.3144

2677A Kyle Road
West Kelowna, BC
V1Z 2M9

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Manufacturing Process

We pride ourselves on the careful manufacturing processes for our pellets and shavings. We follow exacting standards to ensure that we are producing the highest quality products. Here are some of the things we do to achieve and maintain our high standards.

Pellet Manufacturing

It all starts with the raw material we use to make our pellets. The sawdust we purchase has to be a specific species of pine and/or spruce wood. Our sawdust only comes from sawmills where the bark has been removed from the trees. This helps ensure that there will be no contaminants in our pellets, just 100% softwood. Other pellet manufacturers use whatever wood they can get. This will often result in a lower quality pellet.

We never expose our sawdust to the weather. Our sawdust is always protected from the elements which helps ensure that it is never compromised by contaminants from the outside environment (dirt, rocks, etc.)

Our sawdust is taken directly from enclosed storage bins at the sawmills and delivered to us in covered trucks that dump the sawdust right into our building.

The next steps involve getting the sawdust to the right condition. Before we make pellets the sawdust has to be dried to a precise moisture content. Then the material is ground down to fine particles before being pelletized. As an added precaution high intensity magnets are in place along the manufacturing line to remove any potential metal contaminants.

We use two Andritz Sprout 400 horsepower ring die pellet presses. Our pellet dies are made to our detailed specifications. [See here](#) for a picture of a pellet die. The sawdust is pressed into the holes of the pellet die under extreme high pressure. The pressure creates heat that releases natural glue in the wood called lignin. This natural glue flows around the wood fibers and causes the wood to bind together. The high pressure also ensures a compact and dense pellet.

As the wood pellets are pushed out of the die they are cut off to ensure that the pellet length is within Super Premium specifications. At this point in the process the pellets are fully formed, hot and moist, and still quite soft. The heat and moisture is removed in our specially modified cooling equipment. Once cooled the pellets become hard and durable.

The pellets are then passed across two different screens to remove any under or over sized pellets and also any excess dust. Just before bagging, the pellets are vacuumed to remove any remaining sawdust. Our bagging system is fully automated giving us a fine quality finish to our packaging.

Okanagan Pellets - Manufacturing Process

Our stacking process is semi automated. We have highly trained employees handle and examine every bag that we produce. If a bag of pellets doesn't meet our quality control specifications, it will be rejected at this final phase in production. We could have automated this stage, but we strongly feel that strict, humanized quality control is important at this point in the process.

Once the pellet bags are stacked on the pallet (anywhere from 50 to 75 bags per pallet) we use an automated stretch wrapper to put a tight wrap around the pellet bags from top to bottom. A heavy gauge plastic all-weather cover is put over the entire package and then it is fully stretch wrapped again. This keeps everything in place during shipment, whether across the continent or across the ocean. The all-weather cover protects the pellets even when stored outside for long periods.

Shavings Manufacturing

We are very selective of the shavings that we sell to our customers. **Stallion Bedding** shavings have to be white, fluffy, medium size and very absorbent. All of our shavings come from sawmills where they have been kiln dried. Our shavings only come from white pine or spruce.

In our process, we first examine the load of shavings that's been delivered to our facility. If the load doesn't meet our high quality standards for our Stallion Bedding Shavings, we don't use it. Instead it is directed to our pellet manufacturing division.

Once selected, the load of shavings is slowly passed across a series of screens to remove all unwanted sizes and sawdust. In addition, the shavings are vacuumed to remove any remaining sawdust so that the shavings you receive are virtually dust free. In this way, the end result is a consistent product that meets our rigorous standards.

We use specially modified equipment to compress the shavings into 3 cubic foot bales for easy handling and distribution. Our shavings bales are then hand stacked on pallets. Our pallet configuration allows for a 53' trailer to be fully loaded so as to provide the lowest possible freight cost per cubic foot. We put an all weather cap on each stack of bales and then shrink wrap the entire package from top to bottom.

Each bale of our Stallion Shavings weighs approximately 30 pounds. When the bale is opened and decompressed, the shavings expand to cover an area of 12 cubic feet.

Our **Stallion Bedding** shavings are manufactured with stringent quality control guidelines resulting in a year round consistent supply that never changes.

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EXHIBIT 28

Dana Transport Inc Inspection Reports¹

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[... 495051](#)
[535455](#)
[... 6061](#)
[next »](#)

Inspection Id: 34692575	Report#: BP03003176	Inspection Start Date: 03-09-2010 13:17	Inspection End Date: 03-09-2010 13:28	Inspection Status: Complete
City: CARPIO	Inspection State: ND	Inspection Level: Driver-Only	Service Center: West	Source: Pen-Based (not used on Crashes)
Shipper: Bunge Canada	Alcohol/Drug Check? No	Drug Interdiction Arrest: 0	Size/Weight Enforcement? No	Traffic Enforcement? No
Total Violations: 0	Out-of-Service Violations: 0	Driver Violations: 0	Driver Out-of-Service Violations: 0	Vehicle Violations: 0
OOS Vehicle Violations: 0	Hazmat Violations: 0	Inspection Office: 4NDS001	Post Accident Inspection?: No	Last Status: Added

¹ <http://www.quicktransportsolutions.com/inspectionreports/dana-transport-inc-usdot-149776.php?page=52>

EXHIBIT 29

#1

MEMORANDUM

To: The File
From: John F. Kronopolus
Date: June 15, 2011
Re: Grafton Upton Railroad Company
25 Maple Avenue
Upton, MA

On May 11, 2011, the following people held a meeting and site visit at the railroad:

Jon Delli Priscoli, Chief Executive Officer, Grafton Upton Railroad
Eric Moffett, President Grafton Upton Railroad
Patrick Moynihan, The McCormack Firm, LLC – representing the railroad's government affairs
Mike Poiselli, The Dana Companies, Grafton Upton Railcare Terminal Manager
Gene Patten, The Dana Companies, Terminal Operator Safety And Compliance Coordinator
Doug Pizzi, Pizzi Communications Company, representing the railroad
Blythe Robinson, Town Manager, Upton
Chief Goodhile, Upton Fire Department
Diane Tiernan, Upton Board of Health
Richard Desjardin, Upton Board of Health
Barbara Kickham, DEP-BRP
Kevin Daoust, DEP-BWSC
Giles Steele-Perkins, DEP-BWP
John F. Kronopolus, DEP-BWP

A reporter and a photographer from the Milford Daily News did not participate in the meeting portion at the request of the railroad, but did accompany us on the site walk.

The meeting started with introductions. Then this writer explained the reason for the meeting/visit. Since the railroad has been reactivated, concerns have been raised by citizens and other parties about the operations conducted on the railroad property. Those concerns are often relayed to the Upton Board of Health and the Department. Understanding what operations occur on railroad property is critical in responding to citizens concerns in an efficient manner.

This writer then went over a partial listing of MassDEP regulations each bureau is responsible for. Current operations observed do not appear to be subject to MassDEP permitting regulations.

The site visit included looking at their fairly new wood pellet bagging operation and the transloading area. Wood pellets are brought in by railcar and vacuumed into large silos. The pellets are then bagged. Any dust is collected, made into pellets, and bagged. This operation is being conducted by Grafton Upton Railcare who is contracted by the railroad to operate the facility. I informed the group that if greater than 1 ton of particulate matter is emitted to the ambient air, the operation could require an AQ Limited Plan Approval. Based on the description of the operation, it appeared that a permit is not needed at this time.

The transloading operation is also operated by Grafton Upton Railcare as a contracted operation for the railroad. Hazardous and non-hazardous liquids are pumped from rail cars to truck trailers. The pumping

system is set up to minimize the potential for any spillage (liquid is pumped from the top of the rail car to the top of the trailers) and is designed to collect any vapors and return them to the rail car. Future plans, already in construction, are for a more extensive system to collect and manage any potential spills. The railroad is in the process of sloping their new transloading area so that any/all potential spills can be managed in a retention basin. No violations of Massachusetts Hazardous Waste Regulations were observed. Materials being managed are not subject to Massachusetts Hazardous Waste regulations at this time.

During the meeting, site visit and discussions the owner stated he consults with experts in various fields to ensure any new additions to railroad activities meet or exceed current regulatory standards. It was evident that the railroad and the Upton Board of Health (and other local officials) have a good working relationship.

As discussed, it would be helpful to all to have a consolidated and consistent way to address complaints made about railroad activities. At this time, John Kronopolus will serve as the single point of contact for MassDEP. As the Upton Board of Health and Fire Department have been very involved overseeing railroad activities, MassDEP will consult with them to discuss complaints received by MassDEP to determine what follow-up actions are necessary.

This writer's opinion of the meeting/site visit is that it was a very productive. Railroad officials have taken protective measures in areas of potential environmental concerns. Future meetings may be beneficial should different operations, potentially subject to Department regulations, such as transloading of hazardous waste, occur on railroad property.

Original report edited on 6/21/11 by John F. Kronopolus after speaking with Jon Delli Priscoli.

EXHIBIT 30

Upton Planning Board Meeting Minutes
(transcribed from hand-written record)

Meeting Date: October 25, 2011

Location: Nipmuc Regional High School

Members Present:

Regular Members: Gary Bohan, Tom Davidson, Margaret Carroll, Ray Smith and Paul Carey

Associate Member: Bill Tessmer

Motion to accept previous meeting minutes.

Member Davidson provided clarification that he does not have a conflict serving on Railroad Fact Finding Committee. Davidson declined to serve on the Railroad Fact Finding Committee.

Treasurer's Report was discussed.

Office Report was discussed.

The Planning board endorsed a Plan "A" for 51 South Street.

Reid Blute appeared representing Pulte discussed street acceptance.

Motion: PB (Planning Board) recommend acceptance of roadways for Glen Echo.

Motion passed 4 – 0, with one abstention.

Regular meeting was suspended.

PH (public hearing) was held regarding shed setback zoning bylaw proposal amendment.
PH was closed.

Motion to approve bylaw as discussed. Motion passed 5 – 0.

Sprint/Nextel appeared in front of the board to discuss modifications to existing towers:
Adam St and Hartford Ave

Motion to accept Mr. Bohan's resignation from Capital Budget Committee 5 – 0.

Motion to appoint Tom Davidson to Capital Budget Committee 5 – 0.

Motion to appoint Gary Bohan to Railroad Fact Finding Committee 4 – 0, one abstention.

Members Carey and Smith recused themselves from the meeting.

A discussion was held regarding the railroad.

Mr. Davidson read aloud a letter from Mr. Lobbiser regarding the Maple Ave property. Stenographer was present to record meeting.

Motion that the Planning Board take immediate action in filing a Petition for Declaratory Order with Surface Transportation Board regarding all ongoing and proposed activities and uses associated with the Maple Avenue property regarding the degree to which these activities and uses may or may not be covered by Federal preemption. To this end, the Planning Board shall engage the services of an attorney, independent of Town Counsel, and shall appropriate a sum of \$3,000 from the Planning Board operating budget. Motion passed 3 – 0.

Comments were received from crowd.

Meeting was adjourned at 8:20 p.m.

EXHIBIT 31



KOPELMAN AND PAIGE, P.C.
The Leader in Municipal Law

101 Arch Street
Boston, MA 02110
T: 617.556.0007
F: 617.654.1735
www.k-plaw.com

October 26, 2011

Lauren F. Goldberg
lgoldberg@k-plaw.com

Ms. Blythe C. Robinson
Town Manager
Upton Town Hall
1 Main Street, Box 1
Upton, MA 01568

Re: Authority to Hire Special Counsel

Dear Ms. Robinson:

You have requested an opinion regarding whether Town boards or committees have authority to hire special counsel. In particular, you ask whether the Planning Board may hire special counsel using funds appropriated for Planning Board purposes

In my opinion, the Town Bylaws and established case law demonstrate that the Board of Selectmen has sole responsibility for hiring special counsel, except in very limited circumstances where a statute specifically provides otherwise or in connection with the prosecution or defense of a lawsuit when specifically authorized by Town Meeting, as discussed in further detail below.

The issue of whether a board had the authority to hire separate legal counsel was considered in Board of Public Works of Wellesley v. Board of Selectmen of Wellesley, 377 Mass. 621 (1979), the principal case on this point. In Wellesley, the board of public works asserted that it had the authority to hire separate counsel when litigation was undertaken within an area of responsibility of the board of public works or when retention of such counsel was necessary for the discharge of the duties of the board of public works. The board of selectmen argued that the board of public works could not commence litigation on behalf of the town without authorization from the board of selectmen, and that a specific by-law prohibited the board of public works from retaining separate counsel without application to the board of selectmen or town meeting. The Wellesley bylaws provided, in part, that the board of selectmen had "full authority as agents of the Town . . . to institute, prosecute, defend and compromise any and all claims, actions, and proceedings on behalf of or against the Town and in which the interests of the Town are or may be involved." Additionally, a bylaw provided that the board of selectmen was responsible for hiring town counsel, and that no other board or commission of the Town could consult with any attorney other than town counsel if such services would be paid for with Town funds, unless authorized by the board of selectmen or Town Meeting.

The Wellesley court, in considering this issue, stated:

It is conventional learning that a municipal department is not permitted to bring suit for the town without specific authorization from the town or from agents entitled to act for it... unless, indeed, there is governing legislation conferring the power on the department

KOPELMAN AND PAIGE, P.C.

Ms. Blythe C. Robinson
Town Manager
October 26, 2011
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Further, the Wellesley court emphasized the fact that the centralization of authority to appoint legal counsel serves the dual purpose of controlling expenses and improving management of a town's affairs. The cases cited therein confirm the principle that only those bodies which are expressly authorized by legislation, charter provision or by-law may retain legal counsel and that there is no inherent or implied right vested in town boards or agencies to employ separate counsel for litigation purposes or otherwise. Thus, the Court ruled that the Town by-law was valid and binding upon the board of public works and that the Town had properly consolidated representation of all Town agencies into the duties of town counsel.

In Upton, Chapter 4 of the Town Bylaws provides, in part:

Section 1 The Selectmen shall appoint a Town Counsel who shall be a member in good standing of the Massachusetts Bar. The Town Counsel shall advise all executive officers, boards and committees of the town whenever requested by them and shall represent the Town in all legal proceedings by or against it whenever so directed by the Selectmen. All requests for opinions from the Town Counsel shall be in writing, and all opinions given by him on questions of law to any officer, board or committee shall be in writing and signed by him. A copy of each opinion shall be forwarded to the Town Clerk.

Section 2 The Selectmen shall have full authority as agents of the Town to institute and prosecute suits in the name of the town or its officers in their official capacities and to appear and defend suits brought against it or its officers in their capacities, unless otherwise ordered by vote of the town, or provided by law.

[emphasis added].

As such, in my opinion, similar to the court's findings in Wellesley, the Town's boards and officers do not have the authority generally to hire special counsel. Similarly, the Selectmen have authority to prosecute, defend, or otherwise control the direction of lawsuits, except where Town Meeting authorizes a particular board or officer to hire special counsel in connection with a lawsuit and provided further funding is available for such purposes.

State statutes do provide particular boards or committees with the ability to request from the Town authorization to hire separate legal counsel (i.e., ask Town Meeting in the event the Board of Selectmen does not authorize the same). For example, G.L. c.40A, §17, provides that a town may provide any officer or board with independent legal counsel for appealing a decision of a board of appeals or special permit granting authority. Similarly, G.L. c.41, §81BB provides that a town may provide any municipal officer or board with legal counsel for appealing a decision of a board of appeals or a planning board in the subdivision control context. Further, the school committee of a town is specifically authorized to hire legal counsel to represent the committee in collective

KOPELMAN AND PAIGE, P.C.

Ms. Blythe C. Robinson
Town Manager
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Page 3

bargaining, as well as for general purposes. See G.L. c.71, §37E (“The school committee of a city or town may employ legal counsel in connection with collective bargaining with employee organizations for school employees, and may expend money therefor from the funds appropriated by said city or town for school purposes . . .”); G.L. c.71, §37F (“The school committee of a city or town may employ legal counsel for the general purposes of the committee and may expend money therefor from the funds appropriated by said city or town for school purposes.”).

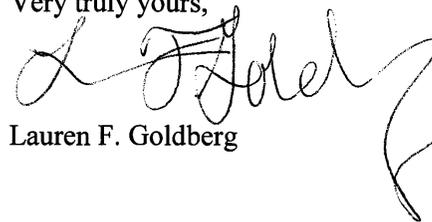
There is no statute specifically authorizing the Planning Board to hire counsel. Moreover, to the extent that the Planning Board might argue that there is an “implied” right to hire special counsel, such argument is in direct conflict with the Town Bylaws, as well as with case law. Discussing whether a board of public works could hire special counsel, the Wellesley court stated, “The board [of public works] is reduced to claiming that the power is implied, but of this suggestion we take the same negative view as did the judge below, noting the specific appointment of the selectmen as ‘agents’ under G.L. c. 40, §2, and the traditional refusal of the courts to imply the power merely from the nature of the official who claims it.” The Court concluded:

The principle that “(i)n the absence of legislative authority . . . a department of a city or town has no authority to employ counsel,” is borne out by many decisions showing intense skepticism about claims of inherent or implied right and refusing to allow them . . . “When legal counsel is meant it is usual to say so.” [emphasis added] [internal citations omitted].

For all these reasons, therefore, in my opinion, the Town’s boards and officers, including the Planning Board, do not have general authority to hire special counsel.

Please contact me with any further questions regarding this matter.

Very truly yours,



Lauren F. Goldberg

LFG/bp
436314/UPTO/0001

EXHIBIT 32

**Upton Planning Board
Meeting Minutes – Tuesday February 21, 2012**

7 pm meeting called to order

Members:

Tessmer, Davidson, Bohan, Carroll & Smith

Motion to waive minutes – passes 4 – 0

Mr. Smith recused.

Maple Ave RR discussion.

Mr. Bohan provided an update and timeline of events associated with the railroad. A motion was made to meet with the Selectmen to discuss the Planning Board entering into a pro bono arrangement with Attorney Bobrowski for the purpose of seeking a Declaratory Order from the STB in regard to the Maple Avenue G&U Railroad site. It was seconded and discussion was held. Passed 3 – 0.

Meeting to be scheduled with the Selectmen.

Motion to post Accessory Structure notice approved 3 – 0.

Meeting adjourned at 7:27.

EXHIBIT 33

Meeting Minutes
February 23, 2012

The meeting was called to order at 7:08 p.m., by Chairman, Al Homan. Also in attendance were; Member, Richard Desjardins; Member, Sherry Berger; and Adm. Clerk, Diane Tiernan.

Jon Deli-Prescoli, owner of the Grafton Upton Railroad was present.

A large animal permit was signed for 169 East Street, Maquire.

Vouchers were reviewed and signed.

Motion one – Sherry made a motion to accept the meeting minutes as written from the previous meeting held 2/9/12. Al seconded the motion and it was made unanimous by Richard. Minutes approved.

Board discussed the noise monitoring of the Railroad at Depot Street. Richard explained his monitoring procedures. We are still trying to establish if there is a pure tone being omitted from the Railroad operation, but the plant needs to be in full operation to check it. We will contact DEP when the noise is at its highest level.

A septic repair design was reviewed for 103 Hopkinton Road, Elizabeth Galloway.

Motion two - Richard made a motion to approve of the design and it was seconded by Sherry. Al made the motion unanimous. Design was approved.

Mail reviewed.

7:45 p.m., John Deli-Prescoli wished to address the Board regarding the current issues at the Railroad. John stated he feels bad that his business is causing so much distress to the Board, and is trying to mitigate, to work with people. We found a way with the poles to work things out and wishes to work together again. He has been an open book with all town departments, not trying to hide anything. His concern right now is that the selectmen are being approached by the Planning Board to hire a lawyer pro bono. He worries what the town will be getting into by pursuing a law suit. The town will be taking on the American Railroad Association, not the Grafton & Upton railroad. This lawyer could cause eruptible harm to the town. Plaintiffs that are private citizens will be individually liable. John stated he would much rather talk about productive things, not lawsuits. He has applied for grant money for the reconstruction of railroad crossings, to fix bridges, to lay a heavier rail, but all will be void if he has to spend all his time and money on a lawsuit.

John explained that the lawsuit in Ayer went on for 7 years with the town and the railroad and in the end; Ayer was assessed 1 million dollars. John stated he is here to say he wants to work with us on the sound problem and be as reasonable as possible, I will do all I can. He will install the insulation on the pipes to deaden the noise from the pellet operation and whatever else it takes to stop the complaints, but if he's being sued, he can't spend the money on these items.

Meeting Minutes
February 23, 2012
Page 2

John stated he is presently working with the town manager regarding a request not to blow the whistles in certain residential areas. He's following the Norack rules where the whistles must be blown, but if there is a way to make other arrangements, he will look at it, but not if he's in litigation. He feels that the BOH and the Selectmen have all been fair to work with.

Al stated it doesn't matter if the Planning Board wants to move forward with a lawyer or not, the authority to employ an attorney is under the Selectmen. Al personally feels the selectmen will not employ the lawyer. The consensus from the newspaper blogs seems to be "why are we wasting our time on this."

Richard stated if the town ends up in a lawsuit with the railroad, all communication will stop. John's lawyer will not allow him to talk with us, and our lawyer will not allow us to talk to him. The railroad is not going away; let's find a way to find solutions.

John stated the area off of Grove Street is being cleared as a staging area only; there will be no chemical storage there. Right now 2/3's of the rail cars are non-placarded cars at the station.

John showed plans of the rail station property, indicating the sewerage and drainage plan. Sherry asked about making a housing container for the pumps. It may help to soften the noise that the residents are complaining about. John agreed to look at it if that's what we want. He prefers to spend money on fixing the problems not pursuing lawsuits. John stated he'd like to speak to Richard directly on how to house the pumps. Clerk asked if he had an estimated date on when the insulation would be installed on the pipes. John stated probably around Memorial Day, depended upon the weather.

8:56 p.m. John thanked the Board for their time.

Motion three - 8:58 p.m. sherry made a motion to adjourn and Richard seconded the motion, Al made it unanimous. Meeting was adjourned.

Respectfully Submitted,

Diane Tiernan, Adm. Clerk

EXHIBIT 34

Board of Selectmen

Town of Upton



Massachusetts

BOARD OF SELECTMEN

Robert J. Fleming, Chairman

Kenneth E. Picard

James A. Brochu

TOWN MANAGER

Blythe C. Robinson

1 Main Street Box 1 Upton, MA 01568

Tel: 508-529-6901 Fax: 508-529-1010

brobinson@upton.ma.us

March 7, 2012

Mr. Paul Carey, Chairperson
Upton Planning Board
1 Main Street, Box 10
Upton, MA 01568

RE: Planning Board – Retention of Special Counsel

Dear Mr. Carey,

It has come to the attention of the Town that the Planning Board voted during a posted public meeting on February 21, 2012 to retain legal counsel to represent the Board to seek a declaratory ruling from the Federal Surface Transportation Board regarding the Grafton & Upton Railroad.

As you are aware, “[i]n the absence of legislative authority, it is settled that a department of a city or town has not authority to employ counsel.” O’Reilly v. Town of Scituate, 328 Mass 154 (1951). In the seminal case on this subject, the Massachusetts Supreme Judicial Court stated, “[i]t is conventional learning that a municipal department is not permitted to bring suit for the town without specific authorization from the town or from agents entitled to act for it unless, indeed, there is governing legislation conferring the power on the department. The rule serves to prevent confusion or conflict in the direction and management of municipal litigation.” Board of Public Works of Wellesley v. Board of Selectmen of Wellesley, 377 Mass. 621, 624 (1979) (internal references omitted) (board of public works). In fact, the Town Bylaws provide that Town Counsel represents the Town in all legal proceedings, although the Board could, at its discretion, authorize use of special counsel. Similarly, the Town Bylaws provide that the Board of Selectmen is the agent of the Town for purposes of undertaking legal action with respect to matters affecting the Town, unless otherwise directed by a vote of Town meeting. It is the opinion of Town Counsel that seeking a declaratory ruling from a federal agency constitutes a legal proceeding or legal action, and is the equivalent of “litigation” as discussed in the above cases. Pursuant to the facts as they currently exist, there exists no authority in the Town Manager Act, the Town Bylaws or any other legislation of which I am aware that authorizes an

individual Town department or officers to hire legal counsel or prosecute legal actions on behalf of the Town. Similarly, neither the Board of Selectmen nor Town Meeting has authorized the institution of any legal proceedings with respect to the matter at issue.

Accordingly, as the Planning Board has not received permission from the Board of Selectmen to either hire special counsel or act as an agent of the Town for purposes of prosecuting legal action, be advised that any action taken by the Planning Board to represent the Town or hire legal counsel to do so is ineffective. Any action brought by the Planning Board or counsel hired by the Planning Board may be done only by the members acting in their individual capacities rather than on behalf of a Town department. Additionally, absent permission from the Board of Selectmen, no public monies may be expended to pay for the services of counsel hired to represent the Planning Board, and the Planning Board members will be individually responsible for the costs of such services.

Furthermore, if the Planning Board members, in their individual capacities, seek such action, and the Surface Transportation Board ruling is not favorable to the Board, the members may put the Town at risk for suit by the railroad to recover its costs, including experts and attorneys' fees, to defend itself in this process. The Town may be liable for such costs, and the Town's Public Officials Liability coverage would not cover such costs. Furthermore, Planning Board members, acting in their individual capacities, would likely not be afforded protection under the Public Officials Liability Policy.

Should you have any questions regarding this matter, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink that reads "Blythe C. Robinson". The signature is written in a cursive, flowing style.

Blythe C. Robinson
Town Manager

Cc: Board of Selectmen

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35652

**PETITION OF
DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH, CHERYL HATCH,
KATHLEEN KELLEY, ANDREW WILKLUND, AND RICHARD KOSIBA**

FOR DECLARATORY ORDER

**VOLUME 3
CONTAINS COLOR PHOTOGRAPHS**

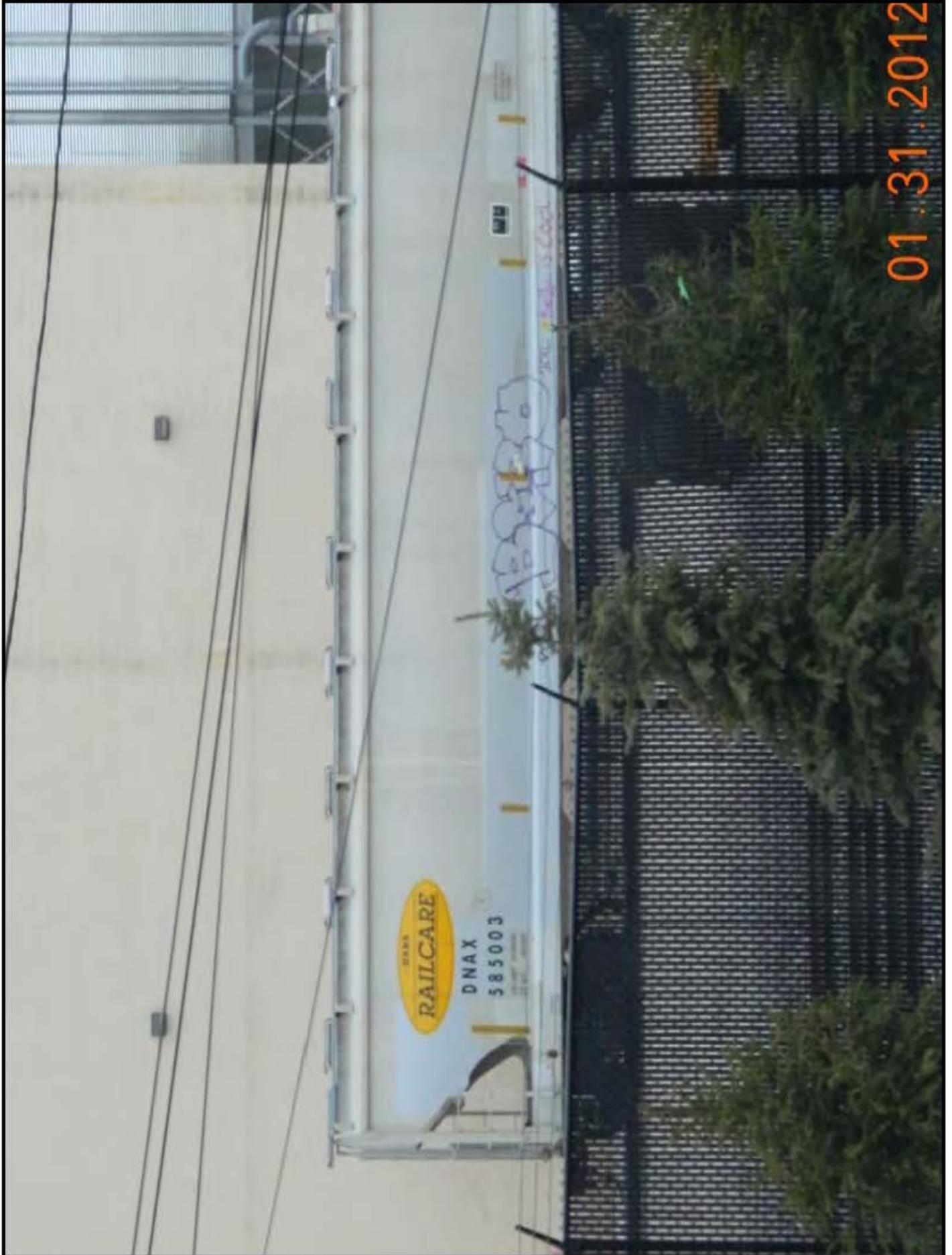
Mark Bobrowski
Blatman, Bobrowski & Mead, LLC
9 Damonmill Square, Suite 4A4
Concord, MA 01742
Attorney for Petitioners

Date: July 23, 2012

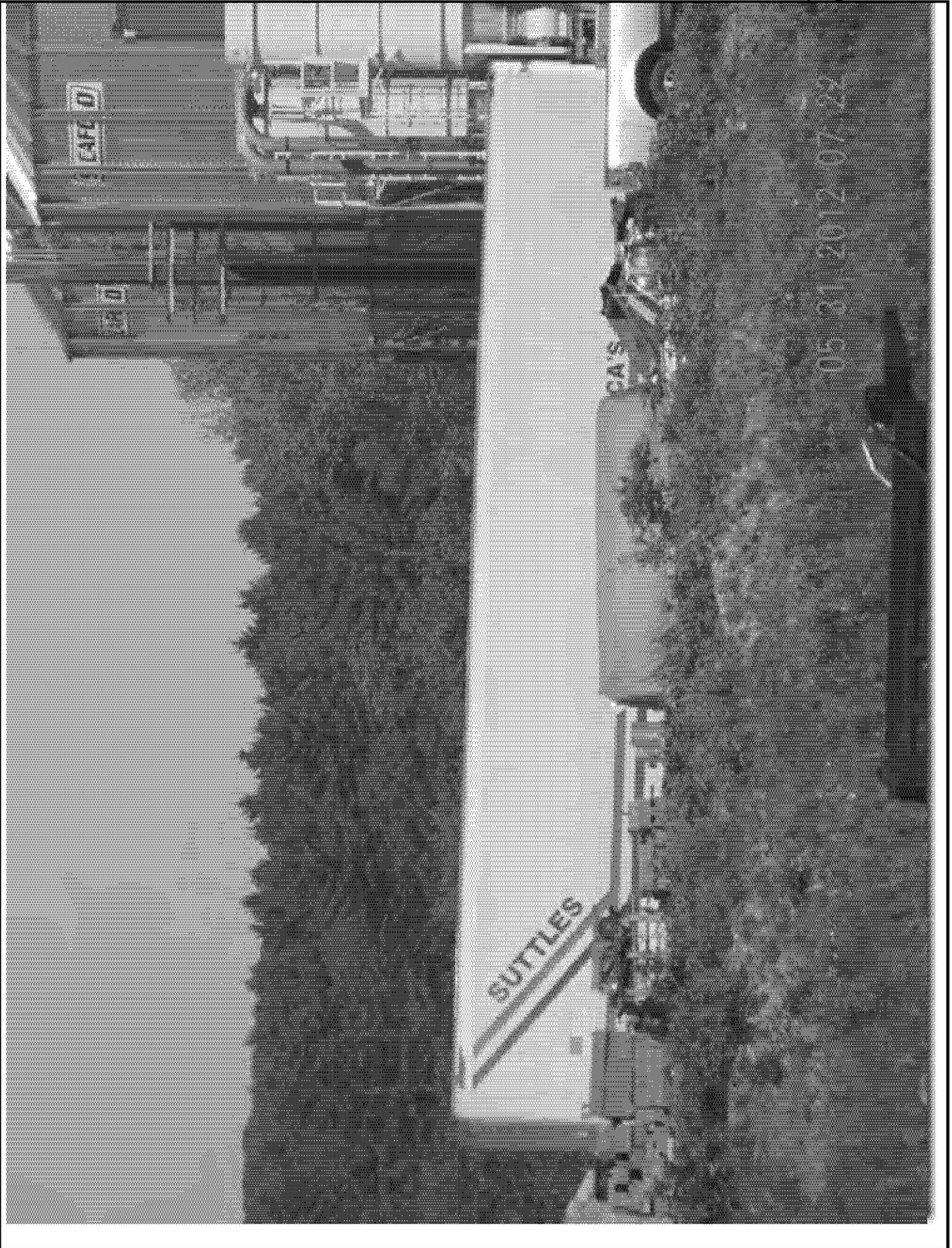
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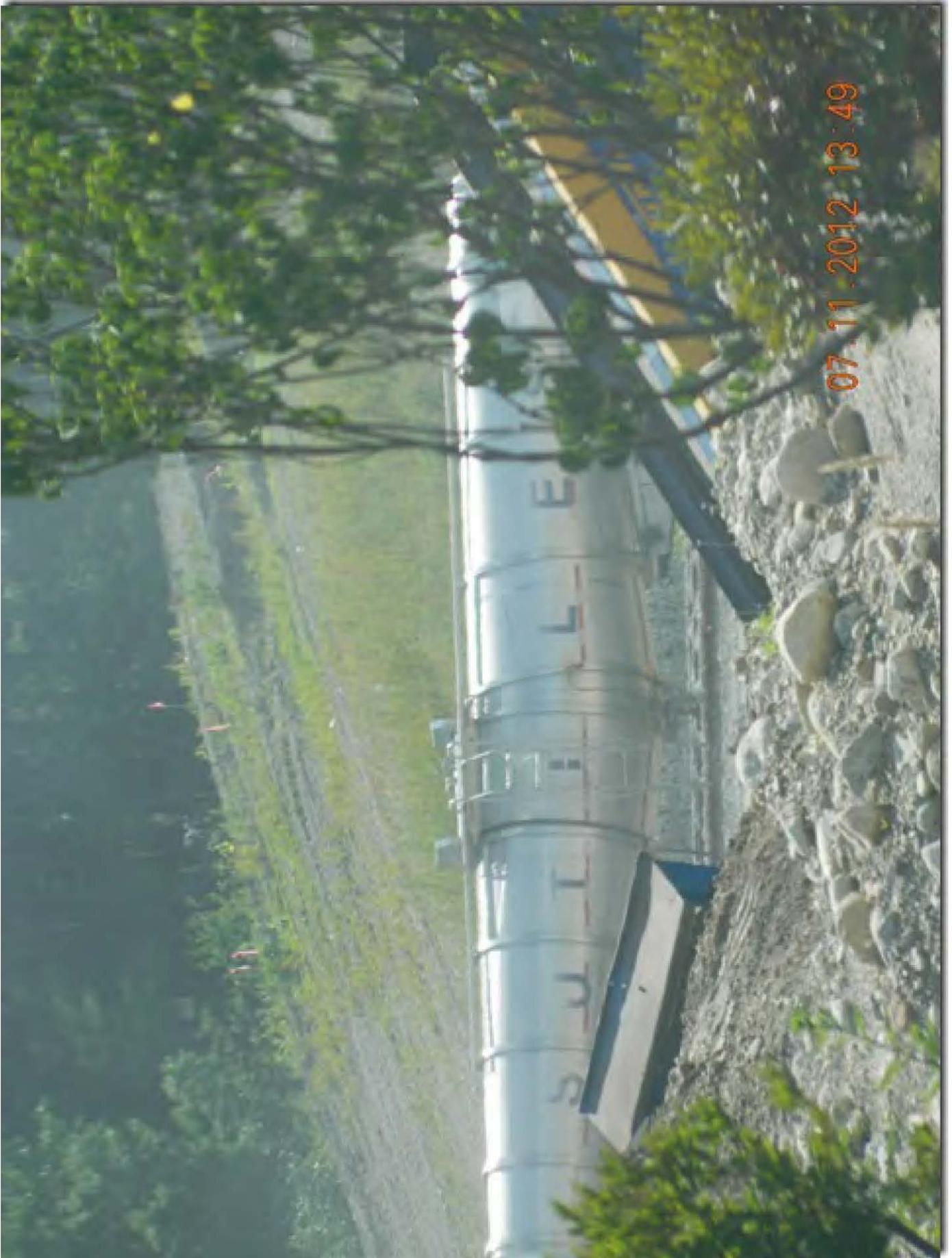
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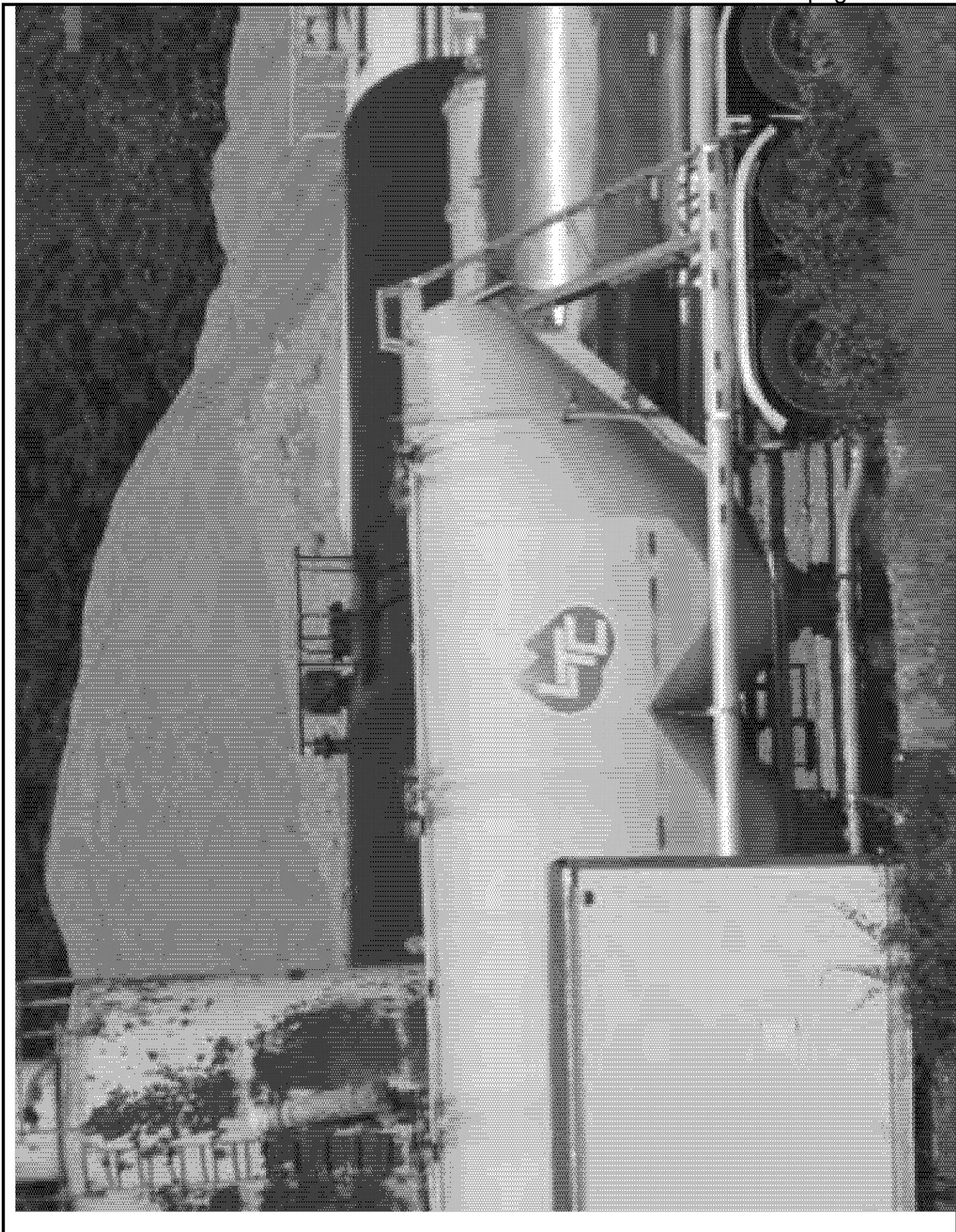
Suttles Tanker activity at G&U Railroad (Upton Facility)

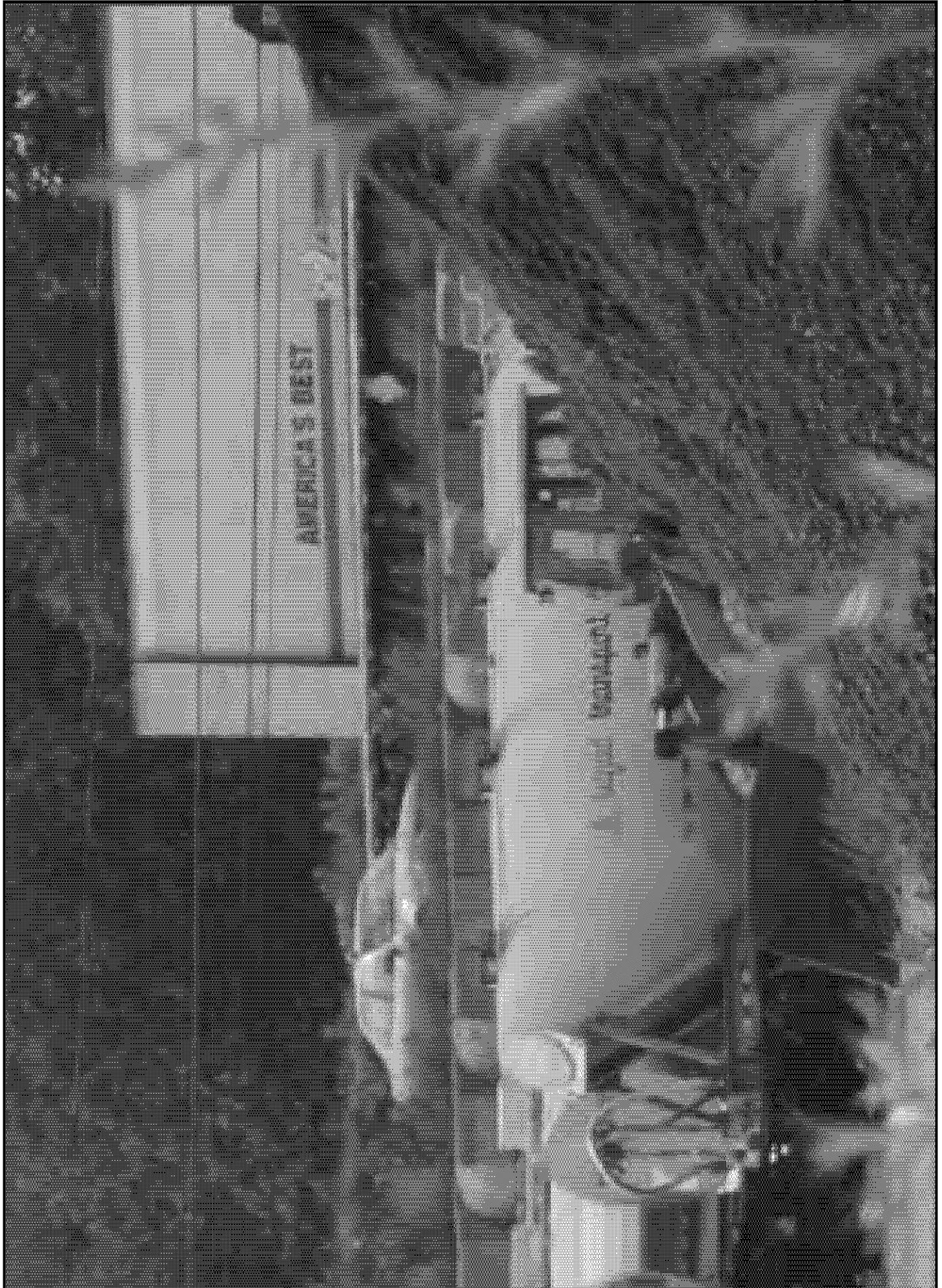


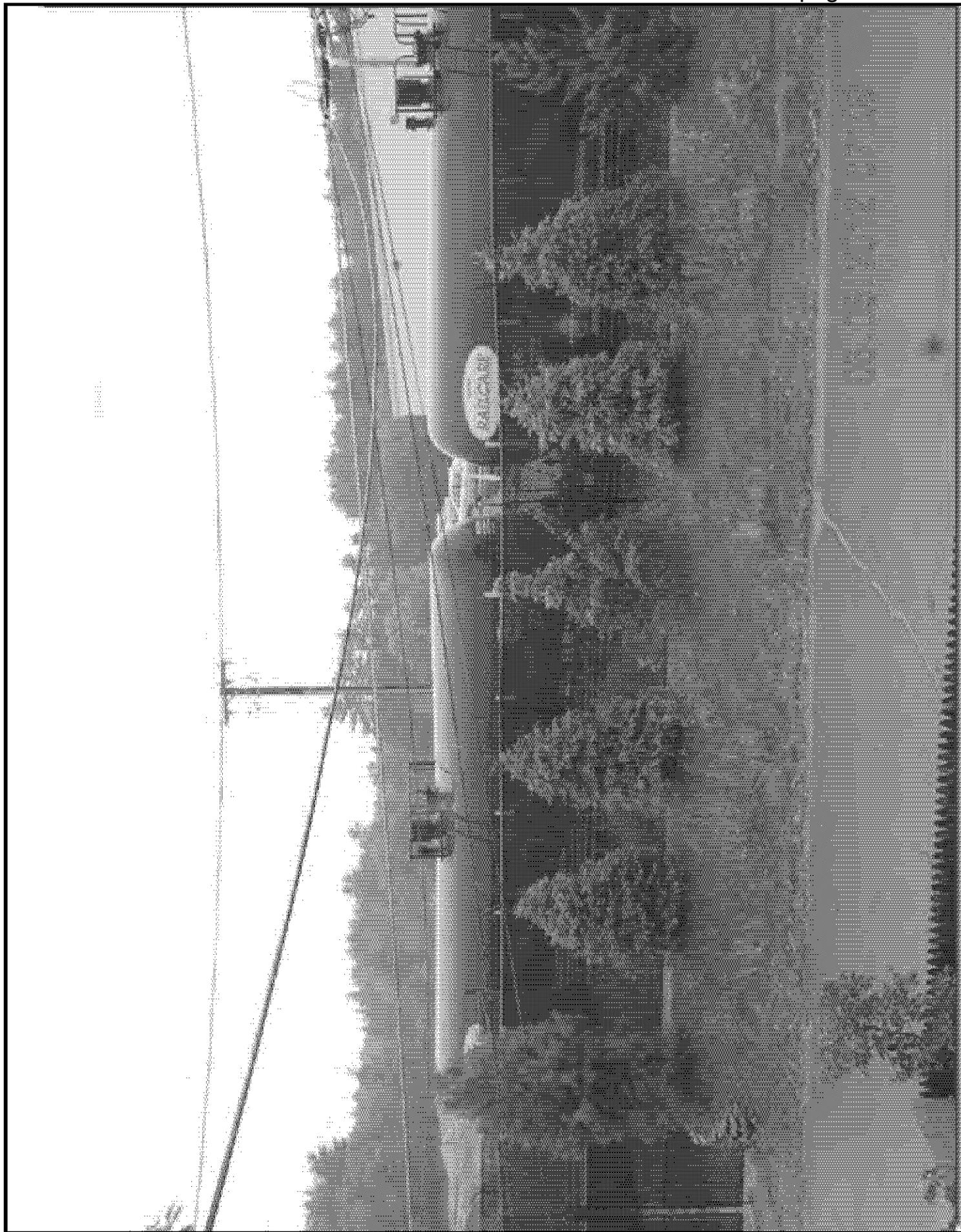
Suttles dropping off Dana tanker at Upton Facility











Comparison of Dana Transport in Grafton and the nearby Maple Avenue Facility

**Dana and Liquid Transport (LTC) vehicles
being stored at the Dana Transport facility in Grafton**

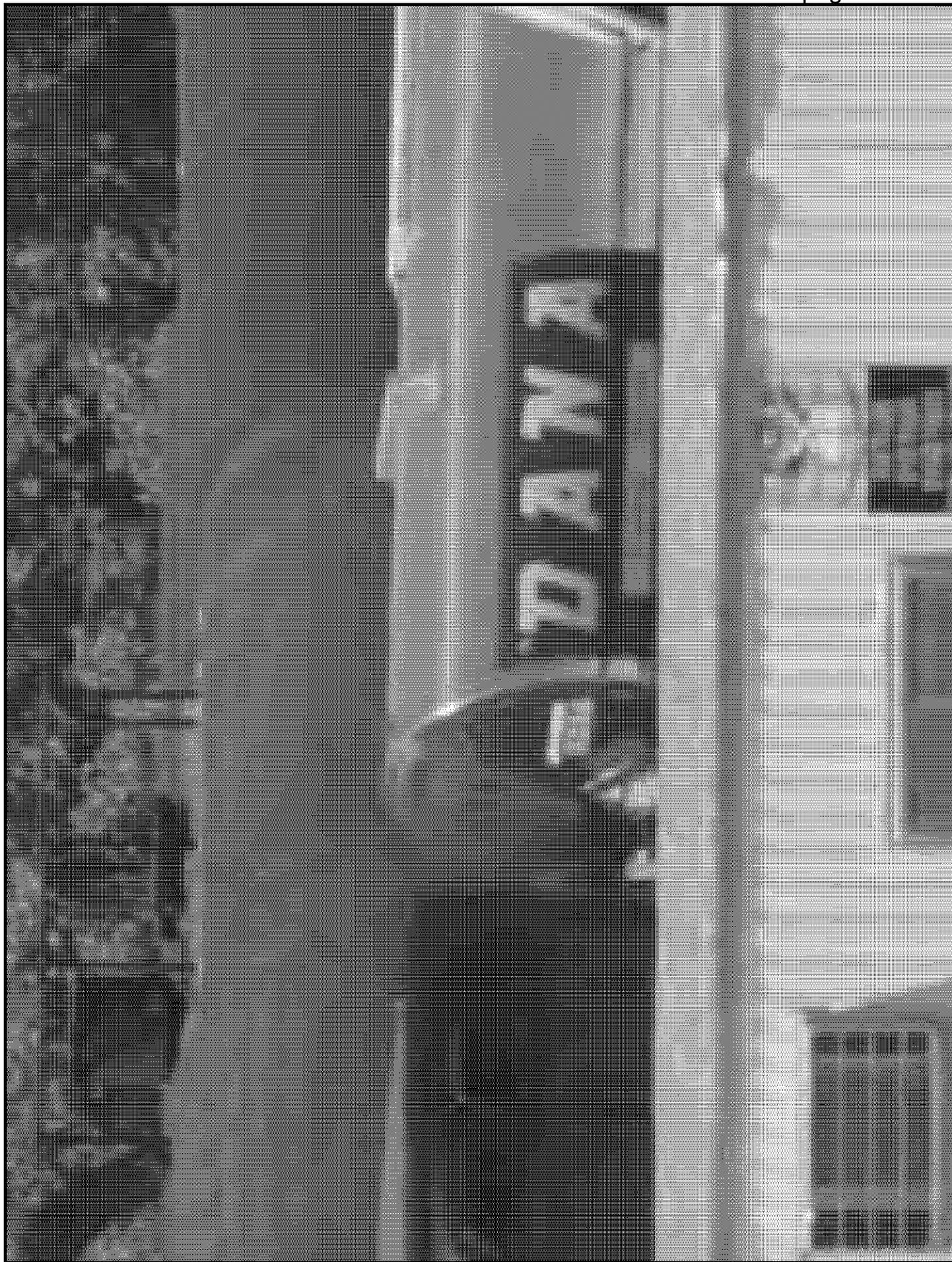


**Dana and Liquid Transport (LTC) vehicles
being stored at the Maple Avenue Facility (about 5 miles away)**





06.03.2012 05:20





Comparison of Signs – GU Railroad (Upton) and Dana Transport (Grafton)



